

# **Background Materials on Utility Governance**

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Governance Alternatives White Paper, Colorado Springs Utilities, 2011

Managing Public Utilities: The American Way, Public Utility Research Center, University of Florida, 2011

Chapter 4: Other Governance Models for Municipal Utilities, Governance in a Changing Market: Alternative Governance Structures – The Los Angeles Department of Water and Power, RAND, 2001

Electric Utility Department Competitive Performance Review, Price Waterhouse, 1996

### **2. Surveys**

Texas and Large Municipally Owned Utilities, Austin Energy, 2012

Testimony of the Texas Public Power Association, Senate Business & Commerce Committee, 2012

2010 Governance Survey, American Public Power Association, 2010

Preliminary Information Regarding Governance and Late Fees from Large Public Power Council (LPPC) Member Utilities, 2008

General Utility Information (of Municipally Owned Electric Utilities), Navigant, 2011

Governance Structures of Municipally Owned Electric Utilities, Texas Public Power Association, 2011

### **3. Other Utilities: CPS Energy (San Antonio, Texas); Colorado Springs Utilities (Colorado); Jacksonville Energy Authority (Florida)**

CPS Energy Presentation to the Senate Committee on Business and Commerce, 2012

CPS Energy Governance Structure presentation to the Electric Utility Commission, Austin Energy, 2008

Governance Structure of CPS Energy

CPS Energy Board of Trustees Role & Accountabilities Statement and Invitation to Apply for CPS Trustee, 2012

Governance Structure Review Assignment, presentation to Colorado Springs Utilities Board by the Utilities Policy Advisory Committee, 2012

Jacksonville Energy Authority (JEA) Board Policy Manual, Bylaws and Charter, 2010

**4. State Government Code and Austin City Council Resolutions**

Texas Government Code Section 1502.070. Management and Control of Utility System

Local Government Code Subchapter G. Management of Certain Encumbered Municipal Electric Utility Systems

Austin City Council Resolution establishing guidelines and financial targets for enhancing the competitive position of Austin Energy, 1999

Austin City Council Resolution directing a Study of Governance Models, 2012

**5. Historical and other materials from EUC Member Shudde Fath**

Memos and Letters from the EUC and Commissioner Fath, including EUC recommendations on governance in 1996 and 2002

Board Governance of Austin's Electric Utility, Additional Information requested by the EUC Finance Committee, 1996

Transcripts and Notes from EUC Public Forums on Utility Governance, 1996; including historical City of San Antonio documentation regarding purchase of CPS

News articles and excerpts

445-1736  
LEAH QUINN  
AUSTIN AMERICAN-STATESMAN  
Tab 5: Historical and Other Material from EUC Member Shudde Fath  
FAX 4745-1736  
Ken Haren  
IN FACT 01723-02  
Caroline Shudde Fath  
Charter Rev. Comm.  
6:00pm  
City Hall  
3rd floor  
+ Neal Korman  
Laker

TO: Members of the Charter Revision Commission

FROM: Teresa Reel, Chair, Electric Utility Commission

DATE: January 14, 2002

SUBJECT: Electric Utility Commission Recommendations Concerning the Establishment of an Independent Board to Govern Austin Energy.

V Governance  
X Charter Revision

The following recommendations were passed unanimously by the Electric Utility Commission at its January 7, 2002 meeting:

"Starting in 1996, the Electric Utility Commission reviewed the reports of independent consultants, including the Price Waterhouse Competitive Performance Review and the report of Metzler & Associates, and conducted a series of public forums designed to foster public education and dialogue regarding the issues of electric utility competitiveness and deregulation.

The Electric Utility Commission offers and fully supports the following recommendations for Council consideration for implementing initiatives designed to improve the competitiveness of Austin Energy.

The Austin City Council shall hold a charter election on May 4, 2002 to establish an independent electric utility board (EUB) to govern Austin Energy. Board members shall owe their fiduciary duty to the citizens of Austin who own Austin Energy. The City Council shall retain approval of rates, debt issuance, and eminent domain.

The EUB shall have all other authority not retained by the City Council, including developing policy, overseeing personnel, and approving the budget.

The EUB shall employ a Chief Executive Officer (CEO) and delegate to the CEO full authority to manage and operate Austin Energy. The CEO shall report directly to the EUB.

The first EUB shall be nominated by a Selection Committee consisting of members of the Electric Utility Commission and panelists from the May 13 and 14, 1996 public forums on governance issues. The nominees shall be forwarded to the City Council. The City Council will appoint, by a majority vote, members of the EUB from the list of nominees.

Replacements to the EUB shall be approved by the City Council, selected from a list of nominees provided by the EUB.

The EUB shall consist of five members, serving four-year staggered terms with no term limits. Two original members shall serve two years, and two original members shall serve four years. As required by statute, the fifth member is the Mayor. Each successive term shall be four years.

THE CHARTER REVISION COMMISSION  
DID NOT RECOMMEND THIS

1-14-02

Shudde Fath 2  
CR2

The EUB can be expanded to not more than seven members if hereafter permitted by State law. See Tex. Gov't Code section 1502.070.

The members of the EUB shall be entitled to reasonable compensation and reimbursement of other expenses incurred in carrying out the duties and responsibilities of the Board. Reasonable compensation shall be defined by and set by the Selection Committee and approved by the City Council."

Participants in May 13 and 14, 1996 public forums on utility governance:

Electric Utility Commission Members

Marilyn Jones, Ph.D., Chair  
Teresa Reel, Vice Chair  
Neal Kocurek, Ph.D.  
Shudde Fath  
Cedric Grice  
Linda Shaw  
Jim O'Connell  
Caroline LeGette  
J. Reymundo Ocanas

Panel Members: X Charles F. Herring, Sr., former State Senator; former LCRA General Manager  
X Ed Adams, Manager of External Affairs, IBM; representative of FAIR  
X Robert Barnstone, former Austin City Council member  
— Tom "Smitty" Smith, Public Citizen  
— Jim Marston, Environmental Defense Fund  
Manuel Zuniga, former Austin Electric Utility Commission member  
— Kirk Watson, representative of Austin Chamber of Commerce; future Mayor of Austin  
Charles Urdy, Ph.D., LCRA and former Austin City Council member  
Len Riley, Site Manager, Texas Instruments  
Al Erwin, former Texas Public Utility Commission member

Moderator Sam Graham, former chair of Austin Electric Utility Commission

X = DECEASED



*Copies 08-13-01 to  
Barry  
Marilyn  
Luis  
Thomas  
Carolyn  
Joseph  
all @ EUC  
to Tamm mailed 08-14  
Neal 08-28-01*



*page 1 of 2  
see  
06-05-96 am*

# MEMORANDUM

*X EUC  
✓ GOVERNANCE*

**TO:** Mayor and Council Members

**FROM:** Marilyn E. Jones, Ph.D., Chair, Electric Utility Commission

**DATE:** June 4, 1996

**SUBJECT:** Electric Utility Commission Recommendations Concerning the Establishment of an Independent Board to Govern the Austin Electric Utility

The Electric Utility Commission (EUC) has reviewed the Price Waterhouse Competitive Performance Review and conducted a series of public forums designed to foster public education and dialogue regarding the issues of electric utility competitiveness and deregulation.

As requested by the City Council, the EUC offers, and fully supports, the following recommendations for Council consideration for implementing initiatives designed to improve the competitiveness of the Austin Electric Utility.

The Austin City Council shall hold a charter election on August 10, 1996, to establish an independent board (Electric Utility Board) to govern the Austin Electric Utility. Such board members shall owe their fiduciary <sup>duty</sup> to the Austin Electric Utility, which is ~~owned by the citizens of Austin~~ <sup>also own the electric utility</sup>. The City Council shall retain approval of rates, debt issuance and eminent domain.

The Electric Utility Board (EUB) shall have all other authority not retained by the City Council, including developing policy, overseeing personnel, and approving the budget.

The EUB shall employ a Chief Executive Officer (CEO) and delegate to the CEO full authority to manage and operate the Electric Utility. The CEO shall report directly to the EUB.

The first EUB shall be nominated by the Selection Committee, consisting of the members of the Electric Utility Commission and panelists from the May 13 and 14 public forums on governance issues. The nominees shall be forwarded to the City Council. The City Council will appoint, by a majority vote, members of the EUB from the list of nominees.

Replacements to the EUB shall be approved by the City Council, selected from a list of nominees provided by the EUB.

The EUB shall consist of five members, serving four (4) year staggered terms with no term limits. Two original members shall serve two (2) years, and two original members shall serve four (4) years. Each successive term shall be four (4) years. The EUB can be expanded to not more than seven (7) members if hereafter permitted by State law.

The members of the EUB shall be entitled to reasonable compensation and reimbursement of other expenses incurred in carrying out the duties and responsibilities of the board. Reasonable compensation shall be defined by and set by the Selection Committee and approved by the City Council.



Marilyn E. Jones, Ph.D., Chair  
Electric Utility Commission

X Eve  
✓ GOVERNANCE

Shuttle This is a folder  
Tab 3: Historical and Other Material from EUC Member Shuttle Path

to EUC members - please  
let us know what you  
think. C.

September 3, 1996

**SECOND DRAFT—NOT REVIEWED BY ELECTRIC UTILITY COMMISSION (EUC) MEMBERS**

To: Austin City Council  
From: Caroline M. LeGette, member EUC  
Re: EUC's Proposal for Independent Governing Board

**Background**

The EUC has focused on the issue of governance of the electric utility for almost a year. We met with the Price Waterhouse staff several times, reviewed their report, met with the City Council about the report's recommendations, and convened a series of public forums, including a forum on May 13 and 14 that focused on governance. We sent our recommendations to Council and we are now meeting with all Council members to get our proposal on the ballot for a charter election in January.

**The Governance Problem**

The EUC unanimously recommends the creation of an independent, partial-powers utility governance board (UGB) with the authority to manage the Austin Electric Utility Department (EUC). This recommendation is supported by the public forum participants and by the Price Waterhouse study.

This recommendation is based on the conclusion that the present governance of the Electric Utility Department (by the City Council) is inadequate to successfully manage the utility in a competitive electric market. We believe that City-Council governance that was adequate for a regulated, noncompetitive market is inadequate in a deregulated, fiercely competitive market. We have identified the following negative consequences of management by City Council:

1. Inattention, slow response time and inflexibility—Council members don't have time to devote to EUD matters or expertise in the management of multi-million dollar industries in competitive markets. Specifically, there is delay, inertia, and inflexibility caused by the need to schedule management and purchasing decisions around council meetings.
2. Timidity at the EUD—there is a passive management style, marked by a tendency to respond to city politics and individual Council Members' political agendas.
3. A lower bond rating—independent rating services downgrade our EUD because it is managed by the City Council. This results in lower ratings and a higher cost of borrowing.

DC-03-91

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4. Council has conflicts of interests—between financial health of utility and need for general fund transfer, for example. We need a governing board that views the EUD like an owner would and has an explicit fiduciary duty to the owners of the utility (Austin taxpayers).

5. Current EUC structure (voluntary advisory group) is too weak to compensate for the problems presented by City Council management of the EUD.

### **Proposed Solution**

The EUC recommends holding a Charter election in January 1997 to create a utility governance board to govern the electric utility. The UGB shall have the authority to develop policy, oversee personnel, and approve the budget.

UGB will employ a general manager to be the chief administrative officer of the utility and delegate to the general manager full authority to manage and operate the utility. The general manager shall report directly to the UGB, rather than to the City Council.

The initial members of the UGB shall be chosen by the Selection Committee, which shall consist of the members of the EUC and participants in the public forum on governance issues.

Qualifications for the board members shall be determined by the Selection Committee. Replacements to the UGB shall be by nomination from the UGB and approved or disapproved by the City Council.

The UGB shall consist of five to seven members pending the passage of legislation by the state legislature. The members of the UGB shall be entitled to reasonable compensation and expenses incurred in carrying out the duties and responsibilities of the Board. Reasonable compensation shall be defined and set by the Selection Committee and approved by the City Council. **NOTE:** the EUC thinks that a five-member board is too small, but we prefer putting a five-member board in place now, pending the passage of legislation authorizing a seven-member board rather than continuing to wait indefinitely for passage of legislation authorizing a seven-member board.

**Austin City Council retains the powers of approving rates, issuing debt, eminent domain, and setting the size of the transfer to the General Fund.**

### **Conclusion**

We are asking City Council members to set the UGB proposal for a January Charter election.

Memorandum

TO: Members Electric Utility Commission  
FROM: Caroline LeGette and Cedric Grice  
RE: Proposal for Independent Governing Board  
DATE: January 18, 1996

*rev  
01-19-96*

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In an attempt to develop a concrete recommendation for an Independent Utility Board (IUB), we would like to discuss the following proposal at the EUC meeting on 1/22.

Please let us know what you would like to add, subtract or change. You can reach Caroline at 469-6120 or Cedric at 463-1169.

STRUCTURE OF IUB

- (a) 5-9 members.
- (b) Membership to include 1 engineer; 1 lawyer; 1 accountant/banking person; 1 retired/not employed outside the home person. In addition, the membership should represent a mix of people of different races, sexes, and locations in the service area. *more specific*
- (c) Board to be compensated, rather than strictly volunteer. Basis and amount of compensation to be determined. *proportional*
- (d) Participation requirement (anyone who misses three meetings in a row to be replaced on the Board).
- (e) Members to be appointed, rather than elected.
- (f) Members to serve staggered terms, overlapping with City Council terms. Terms to be 4-6 years.
- (g) No term limits.
- (h) Membership is not self-perpetuating. Council as a whole (rather than individual members) makes initial appointments and fills vacancies. Council may re-appoint members or appoint new members when terms expire.

POWERS OF IUB

- (a) Bond Authority.
- (b) Eminent Domain.
- (c) Rate Setting.
- (d) Personnel/Budget (This should include decisions about transfers to General Revenue, on a phased-in basis.

That is, the IUB would not be able to control all transfers immediately).

(e) Policy Making.

We may want to recommend that the City Council have a veto over individual IUB decisions. There should probably be a time limit within which Council must exercise its veto or waive it. We may also consider whether the Council would need a super-majority (5 votes) to veto an IUB decision and whether a unanimous IUB could override a Council veto.

#### MERGER OF ELECTRIC, WATER & WASTEWATER

acety  
separation

Under what conditions will we recommend a merger? In any case? Only if a merger is the only way to adopt an IUB? Under no conditions whatsoever?

Those of us who support a merger only if it is the only way to adopt an IUB want to know if a City Council veto will allow an IUB without a merger.

#### PRO

May be a prerequisite to bonding authority for IUB.

LCRA does water and electricity now and seems to manage them well.

These utilities have similar planning, funding & infrastructure requirements.

#### CON

Dissimilarities--the electric industry is becoming highly competitive; the others aren't.

Water & wastewater can be used to control development; electric can't because of obligation to serve.

More management responsibility for electric at time when it needs to be focused.

cc: John Moore  
Mark Zion

04-29  
Pace - W. Governor  
+ summary P-W, to



Robert Barnstone  
1210 W. 13TH  
477-4911

## MEMORANDUM

**TO:** Mayor and Council

**FROM:** Marilyn E. Jones, Ph.D., Chair  
Electric Utility Commission

**DATE:** April 29, 1996

**SUBJECT:** Public Forums on the Austin Electric Utility

Robert Barnstone  
1210 W. 13TH  
477-4911

Robert Barnstone  
1210 W. 13TH  
477-4911

Robert Barnstone  
1210 W. 13TH  
477-4911

The Electric Utility Commission (EUC) is pleased to announce a series of public forums "Public Utility Decisions - FYI." The forums will provide an opportunity for the community and other interested parties to discuss and develop recommendations addressing the five "tough decisions" identified in the Competitive Performance Review of the Electric Utility by Price Waterhouse. The EUC will present a panel of experts, invite the community for public testimony, and answer questions. We hope this inclusive process will result in recommendations that the Council can use in making tough decisions about our utility.

The EUC will solicit the full support of the media and use the EUD resources to ensure full public awareness and participation. Our first step in this process included identifying interested parties and other individuals who we believe would participate in the forums. An invitation to potential panelists and participants will be extended shortly. Persons interested in serving as a panelist may contact the EUD.

The EUC is continuing to refine this process and welcomes your assistance and comments.

### TENTATIVE MEETINGS:

DATE	TIME	TOPIC	LOCATION
Monday, May 13	5:30 p.m.	Governance	Town Lake Center
Tuesday, May 14	5:30 p.m.	Governance	Town Lake Center
Monday, May 20	5:30 p.m.	General Fund Transfer	To Be Announced
Tuesday, May 21	5:30 p.m.	General Fund Transfer	Town Lake Center

**Memorandum to Mayor and Council**  
**April 29, 1996**  
**Page 2 of 3**

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**TIMING:**

April 29/30	EUC subcommittee meeting to finalize panel invites, alternate selections and process, begin contacting panel invitees and distribution of informational packets
April 30-May 3	Contacts made, panel finalized, brief AAS and other media
May 2/3	Press release issued, includes process, members with brief biographies
May 6/7	Notices with information materials sent to interested groups
May 8	EUC report to City Council
May 8-21	Public notices in local newspapers
May 13,14,20,21	Public Meetings
May	EUC to refer initial consideration of PW recommendations regarding conservation to Resource Management Committee (RMC)
June 3	EUC meeting - finalize recommendations to Council
June	Potential City Council/EUC joint worksession
June-August	Public meetings held in conjunction with EUC review of EUD budget. Will address PW recommendations on cost reductions and functional consolidation.

**COMMUNICATION PLAN:** The initial call for interested utility customers to participate, and the deliberations and findings of the public process will be communicated through public worksessions and publicized through press conference, op-ed pieces, etc.

**PRODUCT:** Report recommendations back to Council in a joint Council/EUC worksession to be held in early June, 1996.

**SCOPE:** Five "tough decisions" identified by Price-Waterhouse (Initial focus on #1, Overhaul Governance, and #5, Reduce General Fund Transfer)

1. **OVERHAUL GOVERNANCE:** Delegation of Electric Utility oversight to an electric utility board. Electric Utility Commission has begun consideration in its Finance Committee. Further consideration planned through EUC public process.
2. **CONSOLIDATION OF FUNCTIONS:** Delegate full responsibility and accountability to the Electric Utility Department for functions currently performed in whole or in part by other City departments. Staff consideration underway. EUC will review EUD recommendations during the budget process this summer and provide for public input.



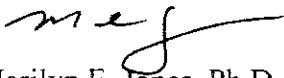
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of 3

**Memorandum to Mayor and Council**

**April 29, 1996**

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3. **RESHAPE CONSERVATION PROGRAMS:** Re-engineering recommendations presented to RMC and City Council. Further consideration referred to RMC.
4. **REDUCE ELECTRIC UTILITY OPERATING EXPENSES:** Budget and staff reductions. Recommendations for implementation being developed by staff as part of FY 96-97 budget. EUC will consider during budget process this summer and provide for public input.
5. **REDUCE GENERAL FUND TRANSFER:** Reduce from 12% to 6.1% (\$27 million) over three to five years. Further consideration planned through EUC public process.



Marilyn E. Jones, Ph.D., Chair  
Electric Utility Commission

August 16, 2007

Mayor Pro Tem Dunkerley  
Austin City Council  
Austin, Texas

Dear Betty:

After the 2008 budget is approved, please consider scheduling an appointment for me to discuss the weighty subject of proposing a charter amendment to replace the Electric Utility Commission with a partial powers independent board. I understand that the new Charter Revision Committee will report to the City Council early next year.

Enclosed is a copy of a too-long and unpublished Op-Ed article I submitted to the Austin American Statesman on December 12, 2006. The final five paragraphs discuss governance of our electric utility.

I have transcriptions of the May 13 and 14, 1996 meetings of the prestigious ten-member panel that discussed governance for six hours and will gladly provide copies, if desired.

As mentioned in my Op-Ed submission, the EUC voted unanimously on June 3, 1996 to recommend an independent board, but no City Council discussion ensued. The EUC again voted unanimously on January 16, 2002 to recommend an independent board, but again there was no public discussion.

It so happens that I believe today's Austin Energy is a very well-run utility ---- an opinion I did not always hold in some long ago years. But I have an old joke that the Electric Utility Commission knows it does not run Austin Energy, and the City Council thinks it does. As you know better than I, the City Council has hundreds of diverse issues on its plate.

Under existing state law, a partial powers independent board would have to be under the laws that apply to City Public Service of San Antonio. The 1996 panel believed an improved model could be designed, but no one advocated going to the Texas Legislature to ask for a new law desired by the City of Austin!

I will deeply appreciate your consideration of this matter after September 13, 2007. At this time, I am not contacting any other City Council members on this issue.

Sincerely,

*Shudde Fath*  
Shudde Fath

1005 Bluebonnet Lane - 78704  
Phone/FAX 512-442-2718

NO  
RESPONSE

FAX 11-09-07 TO  
974-3212 LEFFINAWELL  
974-1887 MARTINEZ  
974-1886 DUNKERLEY

*Shudde Fath*  
To: Electric Utility Commission Members  
From: Shudde Fath *Shudde Fath*  
Date: February 25, 2008

Here is the boxful of governance transcripts, clippings, and memos arranged in chronological sequence.

Until there is a major change in governance, it is my considered opinion that we are just rearranging the deck chairs! So long as Austin Energy pays \$6.2M annually for Economic Growth and Redevelopment Service but cannot pay market rates to hire engineers and technicians, we are in deep trouble.

Because the Domain charter revision petition election will be on November 4, 2008 rather than May 10, there is time to begin discussing this issue with key people now and then take it to the public after the City Council elections in May and June.

As Roger Duncan said at our retreat on Saturday, Austin Energy cannot be involved in the governance issue. It will be up to EUC members to carry the ball. I will be glad to help but cannot "lead the charge".

I ate lunch with my old friend Teresa Reel on Sunday, February 24, and she still supports this partial powers independent board. She was Vice-Chair of EUC in 1996 and was Chair in 2001-02. She now is the capable General Manager of the Combined Transportation, Emergency, and Communication Center (CTECC) located on the back corner of Mueller Airport property. Please note especially the EUC memo dated January 14, 2002.

*NO*  
Also enclosed is the Green Water Treatment Plant Land March 7, 1989 City Attorney opinion, which would seem to apply to Austin Energy's Seaholm, Webberville, and West Avenue properties.

*OBSCURE  
??*  
Finally, I enclose the June 10, 1985 City Attorney opinion EUC Authority to Consider Non-Economic Factors in Ratemaking. It seems this opinion would substantiate my hope for NO residential rate increase on the first 500 KWH when a system electric rate increase occurs in 2011 or later. I also hope for several inverted blocks of increasingly higher residential rates.

P.S. To Toye Goodson:

When you have finished copying all this for EUC members, please call and I will pick up the box.

to EUC

by  
Mark Z...

BOARD GOVERNANCE OF AUSTIN'S ELECTRIC UTILITY

Additional Information Requested by the EUC Finance Committee

I. POTENTIAL ADVANTAGES AND DISADVANTAGES OF BOARD GOVERNANCE

A. Potential Advantages:

**RESPONSIVENESS AND FLEXIBILITY:** To deal with strategic and business changes.

**CONTINUITY AND KNOWLEDGE:** Developed by board members serving for a significant amount of time and developing a working knowledge of a complex business.

**FOCUS:** A result of dealing with one enterprise (electric utility), instead of all the municipal functions addressed in a Council form of utility governance.

B. Potential Disadvantages:

**ACCOUNTABILITY:** Accountability to citizen/owners could be lower with an appointed board serving for a significant length of time versus council members serving shorter terms. Involves tradeoffs with stability.

II. BOARDS AT OTHER PUBLIC POWER SYSTEMS:

American Public Power Association Survey (utilities with greater than 50,000 customers, governed by an independent board):

- o Of 37 respondents, 24% had elected officials, and 43% had board members appointed either by a nominating committee or the City Council.
- o Approximately half of the boards are appointed by the Mayor, but in most cases the Mayor's choices must be approved by the City Council.
- o Of 372 respondents governed by an independent utility board, 32% had term limits of one (1) to three (3) years, 30% had term limits of four (4) years, and 38% had term limits of five (5) years or more.
- o Only ten percent (10%) of responding governing boards are subject to term limits. Restrictions range from one (1) to four (4) years, with two (2) terms reported as the limit 78% of the time.

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01-22-96

**Large Public Power Council survey (telephone inquiries):**

Of fourteen respondents:

- o The majority of LPPC utilities are governed by an independent board of commissioners or directors with final approval authority. Exceptions included:

Memphis Light, Gas & Water - like Austin, board of commissioners present recommendations to Council for approval.

Seattle City Light - Utility Superintendent reports directly to Mayor and City Council. No citizens' advisory group.

- o The majority of LPPC boards are appointed by the Mayor and approved by the City Council. Exceptions included:

Knoxville Utilities Board - board openings advertised in newspaper, screened and nominated by an independent committee and appointed solely by the Mayor.

Nebraska Public Power District - voter's election process.

S. Carolina Public Service/Santee Cooper - appointed by Governor.

- o Most term limits are limited to no more than two (2) consecutive terms ranging from three (3) to seven (7) staggered years. S. Carolina has no term limits.

- o Utilities with joint commissions for electric/water include:

**Los Angeles, California** - 5 members with 5 year terms. Council appointed. Meet twice a month; paid nominal meeting attendance fee. Approval authority. Council has oversight (veto) authority. No specified qualifications.

**Memphis, Tennessee** - 5 members with 4 year terms. Mayor appointed. Meet twice a month. Provide recommendations to Council for approval. No specified qualifications.

**Orlando, Florida** - 5 members (includes Mayor) with 3 year terms. Nominated by City Council and approved by existing board members. Meet once a month. Approval authority. No specified qualifications.

**Salt River Project, Arizona** - 14 members with 4 year terms. Elected by district property owners. Meet up to 20 times per month. Approval authority. No specified qualifications.

III. ISSUES RELATED TO A JOINT ELECTRIC AND WATER/WASTEWATER BOARD

**SERVICE TERRITORIES:** The 421 square mile service territory of Austin's electric utility is larger than the area served by the Water/Wastewater Utility.

**SERVICE OBLIGATIONS:** The Electric Utility is required by the PUC of Texas to serve all customers within its certified service area. The Water/Wastewater Utility has no such obligation. The availability of water and wastewater service is closely associated with growth patterns.

**OPERATIONAL EFFICIENCIES:** Combining the Electric and Water/Wastewater Utilities could offer some cost savings through: joint purchases and economies of scale, operational synergies involving the dual function of certain personnel, resources, right of way, etc. Synergies between electric and water/wastewater operations are not likely to represent major savings.

**POTENTIAL CROSS SUBSIDIES:** Historically, some combined electric/water utilities have used electric revenues to subsidize water operations and costs.

IV. OPTIONS FOR FURTHER EUC CONSIDERATION OF BOARD ISSUES

- o Discussion at Finance Committee.
- o Meeting with Price-Waterhouse team on Board issues in December. Discussion of and coordination with Price-Waterhouse findings.
- o Discussion item at December 11 EUC retreat.
- o Contact Water and Wastewater Commission. Possible joint meeting.
- o Discussion item at joint EUC/Council meeting in January.
- o Further investigation of selected models of Board governance at other utilities.
- o A Charter change and/or state legislation will be required.

1996  
Participants in May 13 and 14 public forums on utility governance

Electric Utility Commission Members

Marilyn Jones, Ph.D., Chair  
Teresa Reel, Vice Chair  
Neal Kocurek, Ph.D.  
Shudde Fath  
Cedric Grice  
Linda Shaw  
Jim O'Connell  
Caroline LeGette  
J. Reymundo Ocanas

Panel Members: Senator Charles F. Herring, Sr.  
Ed Adams  
Robert Barnstone  
Tom "Smitty" Smith  
Jim Marston  
Manuel Zuniga  
Kirk Watson  
Charles Urdy, Ph.D.  
Len Riley  
Al Erwin

Moderator Sam Graham FORMER EUC CHAIR



## City of Austin Electric Utility Commission's Public Forums

Town Lake Center, Assembly Room  
721 Barton Springs Road

### TOPIC: UTILITY GOVERNANCE

#### Agenda

Monday, May 13, 1996, 5:30 p.m.

- I. Staff Presentation on Utility Governance
- II. Panel Discussion
- III. Questions and Answers

*Sam Mahan  
Tom Smith  
Robert Bronstone  
LEN Riley  
Manned Zamora  
Charles Hernandez  
Joni Maston  
Al Ennis  
Kurt Watson  
Charles Under*

Tuesday, May 14, 1996, 5:30 p.m.

- I. Communication from Public
- II. Panel Discussion
- III. Questions and Answers

*5 new  
# of Integ.  
forums  
new & active  
appreciation  
5 min.  
\$50-*

*#5  
absent*

*Bruce Byron (from NAEU)*

*quality  
output  
govt entity (w/ privileges)  
operates as a business  
good judgment  
best interest of taxpayers  
be competitive*



Tab 5: Historical and Other Material from EUC Member Shudde Fath

05-13-96

05-14-01 @ Eve

\* \* \* \* \*

CITY OF AUSTIN ELECTRIC UTILITY COMMISSION'S  
PUBLIC FORUMTown Lake Center, Assembly Room  
721 Barton Springs Road  
Austin, Texas 78704

TOPIC: UTILITY GOVERNANCE

\* \* \* \* \*

BE IT REMEMBERED that the above-captioned matter came on for hearing on the 13th day of May, 1996, beginning at approximately 5:45 o'clock p.m., at the City of Austin Electric Utility Commission, located at 721 Barton Springs Road, Assembly Room, Austin, Travis County, Texas, held before the CITY OF AUSTIN ELECTRIC UTILITY COMMISSION, and the following proceedings were written from videotape by Lydia L. Edwards, and reduced to writing and set out as follows:

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APPEARANCES

Commission Members: Marilyn Jones, Ph.D., Chairman  
Teresa Reel, Vice Chairman  
Neal Kocurek, Ph.D.  
Shudde Fath  
Cedric Grice  
Linda Shaw  
Jim O'Connell  
Caroline LaCotte  
J. Reynolds Ocanas

Panel Members: Senator Charles F. Herring, Sr.  
Len Riley  
Robert Barnstone  
Al Erwin  
Tom "Smitty" Smith  
Jim Marston  
Manuel Zuniga  
Kirk Watson  
Charles Urdy, Ph.D.

Commission Staff: John Moore, EUC Director  
Bob Kahn, Assistant City Attorney

Moderator: Sam Graham

A G E N D A

Tuesday, May 13, 1996  
5:30 p.m.

- I. Staff Presentation on Utility Governance
- II. Panel Discussion
- III. Questions and Answers

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1 MR. GRAHAM: And in a few  
2 moments, the Panel Members will introduce themselves,  
3 but first Marilyn Jones has a few comments to make as  
4 Chairman of the Electric Utility Commission.

5 COMMISSIONER JONES: Good  
6 afternoon -- or good evening. I would like to say to  
7 the listening audience and to everyone here welcome.  
8 We're very excited on behalf of the City of Austin  
9 Electric Utility Commission to say welcome, and we're  
10 very glad that you're here.

11 I was asked what did I  
12 expect or what were my expectations of the public forum,  
13 and I think I would summarize it -- and I did say  
14 this -- that I would like for the citizens of Austin,  
15 the ratepayers, and the Greater Austin community to have  
16 a better understanding, to learn more, and to take an  
17 active role in deciding or working toward the decisions  
18 that will affect their future. And then I thought the  
19 Utility is somewhat like a family because in our family  
20 we know that we plan for our children, we plan for our  
21 grandchildren. We plan and we save for education and  
22 things like that.

23 Well, the citizens of  
24 Austin need to understand that the process that we are  
25 engaging in this afternoon is like planning for your

1 family, and we want the citizens to have a clear  
2 understanding of what's going on. And that is the  
3 purpose of this meeting, to educate, to teach and, in  
4 some instances, to train them in the decision-making  
5 process. We hope out of this will come recommendations  
6 that the Commission will send to the Council.

7 I encourage everyone to  
8 come and to participate. We have a scheduled meetings  
9 for the next -- for this week and next week. If that's  
10 not enough time, I think our Commission would be willing  
11 to go a step farther to make sure everyone has an  
12 opportunity to have input. We will hear from our  
13 commission members maybe on tomorrow night and next  
14 Tuesday, and we will have an opportunity to respond and  
15 also to interact with the public. But I really want to  
16 encourage everyone to come out, to participate and to  
17 listen to these hearings because they are very  
18 important. Thank you very much.

19 MR. GRAHAM: Thank you very  
20 much, Dr. Jones. John, does the staff have a  
21 presentation.

22 MR. MOORE: Yes, we do.  
23 You want to do that now?

24 MR. GRAHAM: Uh-huh.

25 MR. MOORE: Okay. I also

1 want to thank all of you-all, the EUC, of course, and  
2 all of you other citizens that are here tonight to spend  
3 your time the next two nights talking about the Electric  
4 Utility. The -- I think the reason that we come to this  
5 point tonight is as a result of the work that Price  
6 Waterhouse did. That work was done, as most of you-all  
7 know, because of the changing nature of the Electric  
8 Utility business, the fairly rapid movements that are  
9 starting to occur following the 1992 Energy Policy Act  
10 that have brought wholesale competition, have  
11 deregulated the industry on the wholesale level, and the  
12 discussions that are going on now to further that  
13 deregulation and to move toward a more complete  
14 competitive environment.

15 In light of that, the  
16 Council authorized Price Waterhouse to do a number of  
17 things relative to looking at the Electric Utility.  
18 They finished several reports. If you didn't get some  
19 of the handouts that are back on the back table, you may  
20 want to do that. Without spending a lot of time going  
21 over the Price Waterhouse, I want to cut right to the  
22 core of their recommendation. They made what they  
23 referred to as five tough decisions that the Council --  
24 that this community needs to make.

25 The first one was overhaul

1 governance, and I'll come back to that briefly. That's  
2 the prime purpose for the meeting tonight. The second  
3 one was to delegate full responsibility and  
4 accountability to the Electric Utility. As many of  
5 you-all know right now, the Electric Utility Department  
6 has part of the functions of the Electric Utility  
7 operation and others are in various other city  
8 departments, fairly complex and somewhat awkward  
9 organization at times. Third was to reshape  
10 conservation programs. The fourth was to reduce  
11 Electric Utility operating expenses. And the fifth was  
12 to reduce the General Fund Transfer.

13 I think when the Commission  
14 started looking at these issues the City Council talked  
15 about forming another group at one point, then deferred  
16 to the Electric Utility Commission suggesting that they  
17 get more citizen input, more expertise. They began to  
18 focus on the governance issue and on the General Fund  
19 Transfer issue. The Consolidation Item No. 2 and the  
20 conservation and the operating expense, they'll deal  
21 with probably during the budget, but they're primarily  
22 deferring those for now, the conservation program,  
23 deferring to the resource management commission and the  
24 consolidation and the expense reductions to a point in  
25 time where the City Manager has put forward his budget



1 and they have that information to work from.

2 So their focus moved to the  
3 two items that seemed to need more external input at  
4 this time, overhaul governance and reduce the General  
5 Fund Transfer. And for these next two nights, tonight  
6 and tomorrow night, the intention is to focus on the  
7 governance issue and then a week from tonight, on that  
8 Monday and Tuesday, to focus on the General Fund  
9 Transfer.

10 Price Waterhouse's  
11 recommendation on governance was to specifically move to  
12 an independent governing board and, more specifically,  
13 to model after the governing board that San Antonio has,  
14 City Public Service of San Antonio. They reached that  
15 conclusion after looking at a number of different  
16 governance models, looking at state law here, looking at  
17 our bond covenants and trying to put something together  
18 that they thought we could get to within our own power,  
19 i.e., a charter election and not have to have  
20 legislation, not have to go through the expense of major  
21 bond refundings.

22 And what they came down to  
23 was that the San Antonio model, what they call a partial  
24 powers model, was what they would recommend. They think  
25 there's enough independence and autonomy to provide the

1       decisiveness, the competitive edge that you need with  
2       that model, and you can do that under current law, under  
3       current bond covenants with a charter change. You do  
4       not need legislation; you do not need to refund debt.

5                               I believe that's probably  
6       all I'll say at this point. I will point out that one  
7       of the handouts is an excerpt from the Price Waterhouse  
8       study that covers their portion on governance. It  
9       starts on -- with a page at the bottom called 2.1. It  
10      looks like this, the cover page (indicating), two of the  
11      utility models that they study specifically, San  
12      Antonio's and Jacksonville's. Jacksonville's is very  
13      similar, has a little bit more authority vested in the  
14      independent governing board than San Antonio; are two of  
15      the highest ranked utilities by credit raters, both --  
16      whether they're investor-owned or public power. They're  
17      receiving very good marks relative to what people have  
18      rated their credit or believe their public posture to  
19      be. And on that basis, they thought those models were  
20      ones that we really ought to spend some time looking at.

21                           MR. GRAHAM: Have you  
22      received any information from the City's legal  
23      department as to the effect upon employees if a separate  
24      board is created?

25                           MR. MOORE: No, I haven't

1 received anything definitive. We've asked some  
2 questions. I think there's some options there. We are  
3 going to have to get further into that. Merle Wilkins  
4 is here from the city retirement board tonight if you  
5 want to ask her some questions. The Price Waterhouse  
6 study presumes that if you formed a new board similar to  
7 San Antonio employees under that board would not  
8 continue to be city employees, but I believe that that  
9 could be optional.

10 MS. WILKINS: When we, in  
11 our last legislative efforts, went forward when we  
12 thought there was going to be a hospital authority,  
13 there was also some talk of this happening. So what we  
14 tried to do is set up our legislation so if it continues  
15 as an agency of the city or a subagency of the city and  
16 some way the employees could stay in the retirement  
17 system and continue their participation in the same  
18 manner.

19 MR. GRAHAM: And what was  
20 the feedback on that?

21 MS. WILKINS: It was passed  
22 that way.

23 MR. GRAHAM: Okay.

24 MS. WILKINS: It depends on  
25 how this is set up, and if it's set up as an agency of

1 the City, they would be able to continue in the  
2 retirement plan.

3 MR. GRAHAM: Good.

4 PANELIST SMITH: And would  
5 they continue being employees in other ways as well?  
6 I'm thinking here about their union contracts or --

7 MS. WILKINS: I can't  
8 address that. I can only speak to retirement.

9 MR. GRAHAM: So although  
10 the assumption in Price Waterhouse was that they would  
11 be some type of other employee, that is not necessarily  
12 the case at all?

13 MR. MOORE: No, sir.

14 MR. GRAHAM: And the only  
15 exploration that's been done in terms of retirement, it  
16 would not jeopardize the existing retirement benefits?

17 MS. WILKINS: As long as it  
18 was set up specifically to remain an agency. We had our  
19 attorney research into that fact, and the AFSCME had  
20 contacted us also for an opinion on that.

21 MR. GRAHAM: Okay. Thank  
22 you. Anything else?

23 MR. MOORE: No. I believe  
24 on the employee issue you have options. You can move  
25 employees to being fully under the board and not the

1 same as a City of Austin employee and still probably be  
2 under the retirement, or you could leave them as city  
3 employees and operate under all the existing personnel  
4 policies or some hybrid of that.

5 MR. GRAHAM: For my  
6 benefit, John, and for -- maybe for other members of the  
7 general public, could you identify any staff people  
8 or -- that may speak tonight?

9 MR. MOORE: I'll be glad  
10 to, Joe Malaski -- Joe, why don't you stand up, chief  
11 financial officer -- Milton Lee right behind Joe, chief  
12 operating officer; Kathy Kerwin, director of  
13 Administration, Community Relations; David Casper,  
14 director of budget and financial forecasting; and Mario  
15 Espinoza who's helped us coordinate this, policy  
16 planner; and Steve Bartley, director of strategic  
17 marketing, and we have a number of others.

18 PANELIST BARNSTONE: John  
19 Gooding.

20 MR. MOORE: John Gooding, I  
21 don't see him -- but thanks, Robert -- City Attorney --  
22 Assistant City Attorney John Gooding.

23 MR. GRAHAM: If at any time  
24 if you do speak, would you mind identifying yourself the  
25 first time or two to make sure that I call you by your

1 right name? Everyone else in the room probably knows  
2 you, but I may not. I appreciate that.

3 In the meantime, if you  
4 want to bring something to the attention here, please  
5 do. Raise your hand, wave, stomp, do something.

6 MR. MOORE: Yes.

7 MR. GRAHAM: Okay. If  
8 we'll go forward now, I think there are -- other than  
9 myself, there are a number of distinguished people up  
10 here. All are distinguished, and I'd like for them to,  
11 if they would, identify themselves and briefly give us  
12 short background -- not so much background as just so  
13 much if you want to -- this is your opportunity to make  
14 some type of opening statement before we get into the  
15 actual discussion. And as everyone knows, tonight's  
16 topic for discussion is the governance -- the future  
17 manner of governing or looking after the Austin's  
18 Electric Utility, whether it should remain the way it is  
19 or whether there should be a modification of it.

20 Jim, I'm going to start  
21 with you because you're on the right.

22 PANELIST MARSTON: I'm Jim  
23 Marston. I'm the director of the Texas office of the  
24 Environmental Defense Fund. We've been involved in  
25 electric utility issues for over 20 years. We are

1 intimately involved in the restructuring debate around  
2 the country with regard to the electric industry. I  
3 have personally been involved in the issue in the State  
4 of California, some of the states in New England, and I  
5 spend what seems like every day of my life at the PUC.  
6 It's not quite that bad but dealing with this issue. We  
7 have also had the opportunity to appear before the San  
8 Antonio board on more than one occasion. So I have some  
9 personal dealings with the way that board operates.

10 MR. GRAHAM: Thank you.

11 Al?

12 PANELIST ERWIN: I'm Al  
13 Erwin. I'm with Erwin & Associates Public Affairs. I'm  
14 a former chairman of the state utility commission, and I  
15 write horror novels which, I think, qualifies me to  
16 address this issue. From a personal perspective, I  
17 represent Waste Management of North America which does  
18 generate electricity as alternative fuel. So that's my  
19 specific interest here.

20 MR. GRAHAM: Mr. Watson?

21 PANELIST WATSON: I'm Kirk  
22 Watson. I'm a lawyer here in Austin, Texas. I served  
23 as chair of the Texas Air Control Board back when it was  
24 the environmental agency in charge of air quality in  
25 this state, and I currently am vice chair of government

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1 relations to the Greater Austin Chamber of Commerce.

2 MR. GRAHAM: Dr. Urdy?

3 PANELIST URDY: Thank you.

4 Charles Urdy, formerly on the Austin City Council and  
5 probably served during the period when all of the bad  
6 decisions other than the nuke was made. So I think I  
7 have a little bit of experience in what the problems are  
8 here, currently at the LCRA and Land and Environmental  
9 Services.

10 MR. GRAHAM: Thank you.

11 Smitty?

12 PANELIST SMITH: My name is  
13 Tom Smith. I prefer to be called Smitty. I'm director  
14 of Public Citizens Texas Office, which is a consumer  
15 group founded years ago by Ralph Nader. Our offices  
16 have been involved in energy policy for over 25 years  
17 and in Texas for 10. And we are very concerned about  
18 the shift in -- the sort of re-regulation, restructuring  
19 of the electric utility industry and making sure that  
20 municipal utilities don't lose the edge they currently  
21 have in providing electricity at a lower cost than the  
22 investor-owned utilities in Texas and that we in the  
23 process of restructuring the governance of this don't  
24 lose the sight that the ultimate consumer of electricity  
25 cares about their bills, not about their rights, and it



1 is the people who pay the bills that elect the City  
2 Council, not the people who complain about the size of  
3 their rights.

4 PANELIST BARNSTONE: Thank  
5 you, Smitty. I'm Robert Barnstone. I'm like Dr. Urdy,  
6 a former city councilmember. I didn't serve as long,  
7 but Dr. Urdy, with his characteristic humility, did not  
8 really deal with the real problem, and I think that he  
9 knows well that even if we elected geniuses to the  
10 Council -- and we have on occasion -- that the Council  
11 simply doesn't have the time to devote to running an  
12 enterprise of this size. And it is an enormous  
13 enterprise.

14 It's something that I was  
15 concerned about when I was there, that we simply could  
16 not devote the time, and for that reason looking at San  
17 Antonio and the model that -- the very successful model,  
18 I think, that John Moore said it very well, showing that  
19 it was one of the most highly creditworthy utilities in  
20 the nation, but even more importantly than that, it has  
21 lower rates than we do and it makes more money than we  
22 do. So clearly there are lessons there for us. And  
23 I've worked very hard to come to this night. So I'm  
24 very pleased to be here.

25 MR. GRAHAM: Thank you.

1 PANELIST RILEY: I'm Len  
2 Riley. I'm the Austin site manager of Texas  
3 Instruments. Tonight I will try to give some  
4 perspective from industrial customers. Tomorrow night  
5 Ed Adams from IBM will sit here. And hopefully  
6 collectively we can try to give a little bit of that  
7 perspective. I'd like also to mention, though, that  
8 I've been a citizen of Austin for 22 years, and most of  
9 our 2,000 employees in the case of TI and however many  
10 thousand in the case of IBM are also citizens. So I  
11 would like to believe that I bring a second perspective,  
12 namely, the personal perspective.

13 MR. GRAHAM: Thank you.

14 PANELIST ZUNIGA: My name  
15 is Manuel Zuniga. I am a -- I bring the perspective of  
16 a small businessman as well as a resident of Austin, and  
17 I've served on the Electric Utility Commission for two  
18 terms. And that's why I'm here.

19 PANELIST HERRING: My name  
20 is Charles Herring. I've been a lawyer for 58 years  
21 and lived in Austin for 65 years. I've seen the city  
22 grow and a lot of things happen. I am here probably  
23 because I was general manager of the Lower Colorado  
24 River Authority, which is quite a large purveyor of  
25 electricity and always has the lowest rates in Texas of

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1 any utility. It's not a state agency. It was created  
2 by statute, but it never received money or compensation  
3 from the State. And it has -- it's performed quite  
4 well, I think, and I assume that's the reason I was  
5 asked to come here.

6 MR. MOORE: Thank you. Can  
7 I interject a second?

8 MR. GRAHAM: Sure.

9 MR. MOORE: I want to  
10 introduce Sam Graham who has introduced himself, but he  
11 didn't come here just out of the blue. Sam was the  
12 second chair of the electric utility commissioner, a  
13 lifelong citizen of Austin, a lawyer and a mediator by  
14 profession.

15 MR. GRAHAM: And I  
16 apologize for being late. I was concluding a mediation  
17 which was more difficult than anyone thought.

18 Well, we are -- we're going  
19 to have a general discussion among the Panel Members.  
20 We will take a break at 7:00 o'clock for five minutes.  
21 Our target time to conclude tonight is about 8:30. We  
22 can go longer than that. We really -- no one really  
23 wants to be here until midnight tonight. However, I was  
24 asked not to cut off anyone speaking. And there is --  
25 after the panel discussion, there is a time for question

1 and answers. At the back on the table just to the  
2 left -- to my left of the door, there's a sign-up sheet.  
3 If you would like to make a comment or ask a question,  
4 please sign that sheet.

5 And, Neal -- is that  
6 Dr. Kocurek? You're supposed to be down here at the  
7 front. There's a little place for you with a name tag.  
8 You can't hide back there unless you need to leave real  
9 quickly.

10 If you would sign up, then,  
11 we will call on you in the order of the sign-up sheet.  
12 And the reason for the break, of course, is obvious.  
13 It's to keep everyone's attention, but when we do break,  
14 we're going to come right back. It's not to go into 30  
15 minutes or something like that.

16 Robert, you discussed the  
17 San Antonio model. Why don't you talk about that for a  
18 little bit.

19 PANELIST BARNSTONE: Well,  
20 I think that's a wonderful question, and one of the  
21 things that would be good for all of us is if we got  
22 some good information on that.

23 I noticed, for example,  
24 John, that in your comments as you opened you said that  
25 this was an option that had several advantages. One of

1       them is that if we could decide ourselves the charter  
2       change. And my first question is, did you -- could we  
3       get a legal opinion on whether a charter change is  
4       required in order to do that? As even the earlier  
5       discussion with the representative from the employee  
6       pension board indicated, how you contract around what  
7       kind of arrangement the Council enters into with this  
8       new authority or this new entity can perhaps avoid the  
9       necessity of having the charter election.

10                               And so that conclusion I  
11       would like to reopen and say let's lay it on the table,  
12       and while we're at it, speaking about San Antonio, is  
13       let's see what their charter says about what their  
14       relationship is between CPS and also the governing --  
15       I'm sorry -- the San Antonio City Council. And I  
16       understand that CPS was also authorized -- and maybe  
17       Doctor -- I mean, Senator Herring knows something about  
18       this -- through state authority and whether that  
19       particular authority is broad enough to encompass what  
20       we're doing. So what I'm saying is that there's a  
21       number of legal issues about how we proceed, that if we  
22       can avoid a charter election, I would be very pleased  
23       about that simply because it really complicates the  
24       process and --

25                               MR. MOORE: Well, we can --

1 let me get John Gooding or Bob Kahn to come up and  
2 address that. We have -- Price Waterhouse, in going  
3 through their recommendations, did explore this  
4 extensively. I think it would be good to dig into that  
5 and explore it a little better. Bob Kahn with the --  
6 Assistant City Attorney.

7 MR. KAHN: Hi. We would  
8 need a charter election in order to have a board. The  
9 city charter does not provide for a board right now.

10 PANELIST BARNSTONE: Well,  
11 I understand that.

12 MR. KAHN: Okay.

13 PANELIST BARNSTONE: You've  
14 got about -- at least three attorneys -- four attorneys  
15 here that I can see. The charter language says that the  
16 Council has no power to sell the utility. We're not  
17 talking about a sale. So that part -- provision of the  
18 charter is inapplicable. The other place -- part of the  
19 charter that I would believe is relevant is a discussion  
20 about all employees being employees -- the only employee  
21 that the City Council appoints as a city manager. Are  
22 those the two areas you looked into or --

23 MR. KAHN: Well, I looked  
24 into a lot of areas as far as what we might need for  
25 charter changes. I think we really have to look to see

1       how we're really going to end up structuring this to get  
2       into specifics. Right now the way the city charter is  
3       written is we're employees of the City. I think it  
4       would depend on how much control is given to the board.  
5       You know, if the City Council is still on.

6                       PANELIST BARNSTONE: Well,  
7       sure. But as we know, the City enters into contracts  
8       with many entities, and the power of the Council is  
9       unrestricted in the city charter.

10                      MR. KAHN: Right.

11                      PANELIST BARNSTONE: And  
12       so, for example, we earlier had the example again of the  
13       contemplations with the hospital authority where the  
14       Council was contemplating entering into a contract. In  
15       fact, the Council did enter into a contract with Seton  
16       to manage what was formerly a city enterprise. So we've  
17       already done that. We just did that. We just moved  
18       1,500 employees out from under the city manager and put  
19       them under Brackenridge Hospital. So -- and, again, I'm  
20       raising the question because I do think it deserves some  
21       research, and I'm not questioning your judgment.

22                      MR. KAHN: I guess I'm not  
23       sure what your question is.

24                      MR. GRAHAM: One  
25       observation, I think, he's making is that if there is to

1 be a change in the way the Utility is governed, it  
2 shouldn't founder over the employees losing their status  
3 as city employees, correct? But what you're saying,  
4 Bob, is, you don't know what the proposal is?

5 MR. KAHN: Right, I don't  
6 know what the proposal is. We'd have to see what the  
7 details are and we'd have to look at it. I don't see  
8 that as being a stumbling block. I'm sure we could, you  
9 know, figure something out.

10 MR. GRAHAM: And the other  
11 point that Robert is making is that if you have to  
12 change the charter it is one more impediment that has to  
13 get through before this can be created if that is the  
14 shift that's recommended, which may not be. I don't  
15 know.

16 MR. KAHN: There are a lot  
17 of things that are provided for in the charter that  
18 would change depending on how far we want our governance  
19 to change, personnel contracting -- I mean, the list  
20 is --

21 PANELIST BARNSTONE: Sure.

22 MR. KAHN: -- you know, 30  
23 or 40. The list is endless, so all those things that  
24 have to be taken into consideration when we write up  
25 what the board is going to look like.



1 PANELIST BARNSTONE: All  
2 right. So I guess basically, then, is, under some  
3 circumstances, we could set up a board to govern  
4 consistent with the charter that would not require a  
5 charter election?

6 MR. KAHN: No. We would  
7 need a charter election in order to form a board.

8 MR. GRAHAM: Which governs  
9 the utility.

10 MR. KAHN: Which governs  
11 the utility, yes.

12 MR. GRAHAM: The electric  
13 utility.

14 MR. KAHN: Yes.

15 PANELIST SMITH: And, Bob,  
16 is it the transference of certain powers that triggers  
17 that? I mean, we have an EUD -- or an EUC which is set  
18 out by statute.

19 MR. KAHN: Right now the  
20 charter says that the city manager is basically over  
21 John Moore and we respond to the city manager. If we're  
22 going to set up a board which is autonomous, you would  
23 have to change -- you know, amend the charter in order  
24 to allow for that type of structure to occur.

25 PANELIST SMITH: And what

1 are those changes? I mean, is it the fire -- hiring --  
2 allowing somebody else to hire and fire staff, to  
3 contract?

4 MR. KAHN: Anything -- the  
5 whole structure would -- you know, it depends on how you  
6 want to do it, but if you read through the city charter,  
7 probably about every other paragraph -- you know, we  
8 respond to budgeting. You know, right now Betty  
9 Dunkerley does the budget and we have to give input into  
10 her. That would have to change. Personnel would  
11 change; contracting would change. I mean all those  
12 things that we work with the City on if we're going to  
13 have a truly autonomous board. Legal would change. All  
14 that stuff would be autonomous, and the city charter  
15 would have to be amended somehow to take care of all  
16 those changes.

17 PANELIST BARNSTONE: Excuse  
18 me. I don't want to be -- I'm sure that there is  
19 something we could do that would violate the city  
20 charter. I'm dealing with the situation where the  
21 Council would contract with an entity as we just have  
22 with Seton Hospital to run Brackenridge Hospital,  
23 identical situation, 1,500 employees of the city all  
24 working for the city manager, reporting directly to the  
25 city manager. That was the case two years ago. It's

1 not the case today. There was no charter change.  
2 What's the difference?

3 MR. KAHN: I'm not familiar  
4 with the Brackenridge deal.

5 PANELIST BARNSTONE:  
6 Well --

7 MR. GRAHAM: Yes, sir?

8 PANELIST HERRING: Does  
9 anyone know what the charter of the City of San Antonio  
10 is under which they operate an autonomous board?

11 MR. GRAHAM: I don't.

12 PANELIST HERRING: Has  
13 anybody ever inspected the indenture in which they  
14 operate? Does anybody know what the board in San  
15 Antonio does and how it was created and what it  
16 performs?

17 MR. KAHN: Their bond  
18 covenants indicate that they would have a board. And,  
19 in fact, if we went to a board, our bond covenants would  
20 have to be amended to indicate that we were going to  
21 have a board.

22 PANELIST HERRING: Well, I  
23 guess my question was -- and it probably wasn't  
24 answered -- has anybody looked at the charter of the  
25 City of San Antonio?

1 MR. KAHN: I haven't looked  
2 at it. I understand that our consultants have looked at  
3 it.

4 PANELIST HERRING: Well,  
5 what did they tell you about it, anything?

6 MR. KAHN: I didn't ask  
7 them. I don't know what --

8 PANELIST ERWIN: Senator,  
9 initially when the Public Utility Commission was formed,  
10 they were a jurisdictional CPS board. Because the San  
11 Antonio delegation wanted them to be regulated, they  
12 were regulated. At the time, they have a  
13 self-perpetuating board. When the city severed itself  
14 from the business, apparently they gave them the  
15 autonomy to appoint their own successors. And so the  
16 relationship between the city and CPS is almost minimal.

17 PANELIST HERRING: It's  
18 been that way since the 1950s.

19 PANELIST ERWIN: Right.

20 MR. GRAHAM: Yes.

21 PANELIST HERRING: And I  
22 appeared before your Public Utility Commission. Of  
23 course, the City of Austin --

24 PANELIST ERWIN: I gave you  
25 everything you wanted, too.

1 PANELIST HERRING: Well, I  
2 believe that the LCRA now has said they don't want any  
3 change in rates for the next 10 years. So I guess they  
4 got the right treatment.

5 PANELIST ERWIN: Right.  
6 They're doing great.

7 PANELIST HERRING: But I  
8 think -- it seems to me like if we're going to consider  
9 such things as San Antonio -- and I've been familiar  
10 with this for 25 years -- 30 years in some respects --  
11 we ought to know how it was created, what the charter of  
12 the City of San Antonio says, what the indenture is,  
13 what the bond covenants are that apply to San Antonio.  
14 It looks like somebody ought to have looked at that  
15 before we started.

16 PANELIST ERWIN: Right.

17 MR. GRAHAM: The San  
18 Antonio -- I keep leaning forward. The San Antonio  
19 model, as I recall -- and you, Senator, jog my memory.  
20 The San Antonio model is a total delegation and  
21 giving-away of authority by the city, as I recall, and I  
22 don't know if it was done in the fifties or the forties.

23 PANELIST BARNSTONE: I  
24 don't think we know that. I believe that there are  
25 provisions in the San Antonio for the board to nominate

1 their successors, but ultimately the City Council of San  
2 Antonio --

3 MR. GRAHAM: Confirms?

4 PANELIST BARNSTONE: --

5 confirms them. And I think it's their pattern and  
6 practice as opposed to the charter requirement, and  
7 that's what I was getting at. And I think that's what  
8 the Senator is getting at, is that there are a number of  
9 issues that cut to what we're trying to do that we need  
10 to find out what is that.

11 MR. MOORE: There's some  
12 descriptive information on the San Antonio model in this  
13 document on Page 2.

14 PANELIST HERRING: That's  
15 not what you need. You need details.

16 MR. MOORE: Well, we can  
17 get you the details.

18 PANELIST HERRING: The  
19 people of San Antonio would be glad to give them to you.

20 MR. MOORE: Yeah. We can  
21 get that.

22 PANELIST HERRING: Copy  
23 machine.

24 PANELIST MARSTON: Sam,  
25 just to --

1 MR. MOORE: On Page 2.4 and  
2 2.5.

3 MR. GRAHAM: Yes, Jim.

4 MR. MARSTON: The San

5 Antonio board is not a completely independent board.

6 Certain powers still reside with the City of San

7 Antonio. I and, I think, you and other people may have

8 been under the impression that they are completely

9 independent because in practice the San Antonio City

10 Council almost always rubber-stamps the decisions of the

11 board. My understanding is they've only failed to

12 approve one of the self-nominated board members one time

13 in the many years. But by law, I mean, a number of

14 powers, including the power to set rates, eminent

15 domain, issue bonds, continues to reside with the city

16 council. One of the things I would --

17 PANELIST ERWIN: This model

18 that you've got on 2.4 does pretty well explain it the

19 way that you just explained it.

20 PANELIST MARSTON: Is there

21 someone here, not on the legal side but on the factual

22 side, of how the city -- who knows something about how

23 the City of San Antonio or the CPS operates, who's on

24 it, when they meet? I mean, I have a number of those

25 questions before I form an opinion. I'd like a little

1 more discussion about that. Is there somebody who knows  
2 about that?

3 MR. MOORE: Yeah. I can  
4 give you an overview --

5 PANELIST MARSTON: Okay.

6 MR. MOORE: -- not all the  
7 legal details.

8 PANELIST MARSTON: Okay.

9 MR. MOORE: But I can give  
10 you an overview, and that's what's in this information.  
11 San Antonio's board has five members. The mayor of the  
12 city council, who is elected, is an ex officio member.  
13 The board can serve two five-year terms. They're  
14 staggered. The board in the past reappointed vacancies.  
15 Today they make a nomination to the council that the  
16 council has to approve. They do not have the power of  
17 eminent domain, they do not have the power to issue  
18 debt, and they do not have the power to set rates.  
19 Beyond that they have all the other powers. That's  
20 called the Partial Powers Board in the write-up. If any  
21 one of those three powers were to be conveyed to an  
22 independent board, we would need either a legislative  
23 change or we would need to do some very expensive  
24 refunding to change our bond covenants, and that's the  
25 small window that we're able to work through.



1 I don't guess we really  
2 ever answered Robert's question, can we do this in  
3 effect without a charter change, and we'll try to work  
4 on it a little bit more. You know, we obviously could  
5 contract with somebody to manage all or part of the  
6 utility. But to have a governing board without a  
7 charter change, I think that's the answer you were  
8 hearing from our attorneys can't be done.

9 PANELIST BARNSTONE: Well,  
10 I mean, contract with a governing board, there are other  
11 attorneys here who have -- may have a view on this. But  
12 it seems to me that, as Jim just said, you know, the  
13 pattern and practice of a city is really what counts  
14 when you're making decisions. And in the case of San  
15 Antonio, they have some legal requirements and their  
16 pattern, and they have, from all indications, a fairly  
17 smooth operation. So I want to take whatever lessons we  
18 can from them.

19 MR. GRAHAM: Absolutely.  
20 That again gets back to what Senator Herring was saying.

21 PANELIST MARSTON: Let me  
22 just make clear why I'm asking these questions. I know  
23 they operate smoothly, but having appeared before them  
24 or having my lawyers appear before them, it is not all  
25 necessarily a wonderful situation. They -- frankly from

1       our dealings, they don't look much like the City of San  
2       Antonio looks like. It looks like a small part of the  
3       City of San Antonio. They meet during the day generally  
4       as opposed to 5:30 at night when -- I mean, this -- let  
5       me just say the Commission looks very different to me  
6       than that board when I was in front of it. They tend to  
7       be people who either like me and had a nonprofit -- I  
8       don't know if anybody was on a nonprofit -- somebody who  
9       got paid to sit on a commission.

10                               And I -- Austin is very  
11       different from that. We have a different tradition, and  
12       I would encourage us to take the best -- if we're going  
13       with the San Antonio model, take the best part of that  
14       model but to recognize there are some parts of that  
15       model that we may not like that -- where we have people  
16       who are not fully representative of the community as a  
17       group, and I'm very concerned about that.

18                               I guess I also think we  
19       need to figure out ways -- we have an amazing history of  
20       encouraging democracy in Austin. That's got good and  
21       bad sides. San Antonio didn't really like to have  
22       hearings where people came in and raised questions.

23                               "Who are you?"

24                               "Well, you know, we have  
25       members in your city and we'd like to talk."

1 "Well, we haven't seen you  
2 before."

3 So I guess I would  
4 encourage us to -- maybe my impression is wrong about  
5 that board now. I haven't been there in a few years.  
6 But I would encourage us to make sure we understand how  
7 their board works.

8 I'm particularly concerned  
9 about the self-nominating process. I'm on some boards  
10 where we nominate ourselves. It works real well to keep  
11 your friends on and control things in a very nice and  
12 neat way. I kind of like that on a couple of my  
13 nonprofits, but I'm not sure that's the way you want to  
14 run a public utility. And I would raise that question.  
15 I like the idea that somebody, a Charles Urdy or a  
16 Robert Barnstone, have some not only legal authority  
17 but, in practice, real responsibility for who gets  
18 nominated to these boards so we have some responsiveness  
19 to the public.

20 MR. GRAHAM: Well, that  
21 brings you to the threshold question, which is, does  
22 there need to be a change in the way the utility is  
23 governed?

24 PANELIST SMITH: Let me  
25 suggest a couple of thoughts here. One, I think it

1 would be very useful for us to schedule for tomorrow  
2 evening, if at all possible, a briefing by staff of the  
3 various models and do a little bit more in depth than we  
4 have here. And if you have someone perhaps from Price  
5 Waterhouse or someone who can give us some more in  
6 depth. It really boils down, I guess, to two or three  
7 models that --

8 MR. GRAHAM: Excuse me just  
9 a second. Would that generally be helpful to everyone?

10 PANELIST SMITH: And what  
11 might be useful --

12 PANELIST MARSTON: Can I  
13 modify that?

14 MR. MOORE: You want more  
15 detail than what's here?

16 PANELIST SMITH: Yeah.

17 PANELIST MARSTON: It seems  
18 to me probably all five models are not under serious  
19 consideration, and I'd rather us focus our attention on  
20 the two or three models that are really under  
21 consideration. We have a financial -- I think the  
22 Greenville model probably causes you to spend a lot of  
23 money, John.

24 MR. MOORE: Yes.

25 PANELIST MARSTON: I'm not

1 real excited about the City spending a bunch of money to  
2 refinance their bonds. I suspect that's not on the  
3 table. I wouldn't have us spend time on that. I'd like  
4 to spend a lot of detail on -- time on the two or three  
5 ideas that are on the table.

6 PANELIST SMITH: I'll  
7 certainly agree with Jim on that one. But what might be  
8 useful is for us to spend some time this evening kind of  
9 talking about why -- what our goals would be in changing  
10 from what we have and begin, rather than getting  
11 involved in the model, to talk about what we'd like to  
12 see done differently and what improvements we're seeking  
13 and then see if any of these models happen to fit that  
14 paradigm.

15 MR. MOORE: Before we leave  
16 tonight, I'd like to get a little bit better idea of  
17 what detail because I thought there was plenty of detail  
18 here to get you through the threshold question.

19 PANELIST BARNSTONE: In my  
20 point of view, John, the only detail -- I mean, the main  
21 detail that I want is, I want a legal opinion of what we  
22 can do.

23 MR. MOORE: We don't have  
24 that question --

25 MR. GRAHAM: I would think

1           you could get that by tomorrow tonight.

2                                   PANELIST BARNSTONE:   I'm  
3           sure I can.

4                                   MR. MOORE:   We might can.

5                                   MR. GRAHAM:   On the  
6           charter?

7                                   MR. MOORE:   Yeah.

8                                   PANELIST BARNSTONE:   You  
9           know, you asked this question and, I think, a fair  
10          question. I don't know whether we've gone around and  
11          expressed views on this. But are you saying -- you want  
12          to raise the question whether we really do need to make  
13          a change?

14                                  MR. GRAHAM:   Uh-huh, yeah.  
15          I think implied in the question is, and in the  
16          discussion tonight, is the status quo working or is it a  
17          consensus for the persons up here that there needs to be  
18          a change in the way the utility is governed? If so,  
19          let's get to what is the --

20                                  PANELIST BARNSTONE:   I'm  
21          already after my time, but let me take a shot at that  
22          because I -- I mean, I do believe that it needs to be  
23          changed and the reasons are profound. First of all,  
24          let's set aside the question of San Antonio that has --  
25          makes more money than we do and has lower rates than we

1 do, and by the way, they're in the same nuclear power  
2 plant than we are. The performance over the years --  
3 and there's another financial to this that's also more  
4 meaningful, and that is that they also reinvest more  
5 into their plant and equipment than we do out of their  
6 rates. We only reinvest 5 percent, I believe, and they  
7 reinvest 13 percent. I guess those were the numbers  
8 when John gave me that report a couple of years ago.

9 Now, the City Council has  
10 zoning, has budget, has a laundry list of everything  
11 imaginable, and to add a 500 million dollar a year  
12 business with three billion dollars in assets to manage  
13 in their spare time, you know, is -- seems to me a  
14 prescription for great harm. We could -- you know,  
15 again, we could examine decisions that have been made in  
16 the past, that perhaps an independent board would have  
17 the time to explore them who knew more about the issues,  
18 could have made a better decision. But my view is that  
19 you cannot run a major corporation without a head,  
20 without a working board, and I don't think that there's  
21 a person in this city who believes that the City Council  
22 is an asset to the Electric Utility. Now, you would not  
23 think of running a corporation like General Motors  
24 without a board or without a head, but that's  
25 essentially what we're asking to do.

There's another problem more subtle. John Moore is in a very difficult position. He has to go through an assistant city manager to get to the city manager. He's got budgetary requests. His loop is long and complex. He can't go to his board and say, hey, we need to buy this now or we need to do this now. He's got to stand in line, wait outside councilmembers' offices, hours on end sometimes. Councilmembers aren't always as courteous as they might be to staff. And his time is valuable and decision time is very valuable. So we're really running an operation, I think, without a head and with staff distracted. And, you know, just to go over bad decisions, that would -- you know, I would close my case saying that.

MR. GRAHAM: So, Robert, as a former member of the Council, you speak from experience in the lack of time that you have with all the other areas of concern to adequately look into and administer -- be the policysetter for the Utility. Plus, as Price Waterhouse put it, there's a different purpose that a city councilperson has than maybe the director of the utility has.

Before we turn there, Senator Herring brought up -- when we were talking about getting information about San Antonio, he brought up



1 some fundamental, historic questions, which are, if you  
2 can find this out by tomorrow, why this shift occurred,  
3 what kind of blood bath was going on down there  
4 politically or foreseen and, two, what is the specific  
5 charter provision that we're operating under -- or  
6 they're operating under. Excuse me.

7 PANELIST HERRING:

8 (Inaudible.)

9 MR. GRAHAM: There had  
10 to -- there was some kind of reason for -- the council  
11 said let's get this over here. There had to be but in  
12 addition to what may be perceived as good business  
13 sense.

14 PANELIST HERRING:

15 (Inaudible.) We need to look at the charter and look at  
16 how it operates. It's more efficient, the rates are  
17 lower than ours, and I don't understand it. It seems we  
18 ought to give consideration to it but, first of all,  
19 find out what they've got.

20 MR. GRAHAM: Yeah, exactly.

21 Dr. Urdy?

22 PANELIST URDY: Just to

23 follow up on what Robert said, I think you have to  
24 change the governing structure. The bureaucratic,  
25 politics-driven system that we have in city government

1 simply cannot manage the competitive business. I mean,  
2 that isn't going to happen. So if the Utility becomes  
3 competitive, that's out. It can't be done. And Robert  
4 made it even cruel saying they were not friends of the  
5 Utility, but it is not simply a matter of time. Even if  
6 the Council had time, it couldn't do it. In the  
7 structure, it cannot be done, I don't think, because it  
8 is politically driven, and even if you have time, the  
9 more time you have sometimes to scrutinize some of these  
10 things the worse it gets.

11 So I think it's a  
12 fundamental problem and especially with Austin because,  
13 you know, we've had a prescribed service territory and a  
14 mandate to serve anybody who was in that service  
15 territory. This is totally different from what you  
16 would experience in a competitive market that now has to  
17 be driven by -- you know, by customer service.

18 This is -- the City  
19 Council -- I'm not speaking of this current City  
20 Council. Even the ones we were on, Robert, which were  
21 the best ones in the history of the -- it simply cannot  
22 do it. The structure does not allow it to happen.  
23 There are too many other things. And, you know, I mean,  
24 if you are the councilmember who's sitting there and all  
25 of a sudden a five million dollar transformer comes

1 before his desk and he has no idea what it's for, you  
2 can't expect them to simply go forward. You can't.  
3 He's going to say, "Well, postpone it for two weeks  
4 until I can learn what this is about." It can't be  
5 done.

6 So I think from my point of  
7 view the first step is that we have to be looking at  
8 some way, however we can do it, whether it's with a  
9 charter change or without, a creation of an independent  
10 board, a board with sovereign power, a working board  
11 that can sit there and govern the Utility on a  
12 day-to-day basis. Otherwise, we're just sort of wasting  
13 our time.

14 MR. GRAHAM: Mr. Zuniga?

15 PANELIST ZUNIGA: Yeah. I  
16 would like to suggest that we go around the room because  
17 I just finished a City Council race myself, and in the  
18 public, it was almost a foregone conclusion. Everyone I  
19 talked to was in favor of an independent board. And I  
20 would bet you that if you asked everybody in this room  
21 it would be a -- I mean, I think we can take a step by  
22 saying if we have general consensus on that.

23 MR. GRAHAM: I'm seeing Len  
24 Riley is nodding his head. Mr. Erwin?

25 PANELIST ERWIN: I agree

1 completely. I've watched this utility. I've advised  
2 them from time to time, unpaid mostly unfortunately.  
3 And I've seen a transmission system that was vital and  
4 necessary to the future of this utility get turned down  
5 because a political vote of the Council said that there  
6 were some people that might not like to see a  
7 transmission system in their view. We've got to look at  
8 things like LCRA. LCRA operates efficiently and on  
9 behalf of their customers, but they do it quickly.

10 We've got competition  
11 coming that's going to kill us under our current  
12 structure. People are going to be able to underbid us  
13 in 10 minutes on a computer. If this Electric Utility,  
14 which I happen to think is very well-managed, by the  
15 way, can't respond in 10 minutes with a lower rate or a  
16 different rate structure or a different reaction, we're  
17 dead. We're dead in the water. So we've got to change  
18 this.

19 And let me say one other  
20 personal note. As a ratepayer of the City of Austin  
21 Electric Utility who lives outside the city limits, I  
22 would also like to see the structure of a new board  
23 include me. Right now taxation without representation  
24 is not a pleasant prospect, especially to a regulator.  
25 So that's another aspect I'd like to see with an

1 independent board, is that we also consider  
2 representation for people who are not within the city  
3 limits.

4 MR. GRAHAM: Just one of  
5 the things Price Waterhouse writes out. Jim -- Kirk,  
6 you haven't spoken.

7 PANELIST WATSON: Well, it  
8 strike me that -- having served on a so-called  
9 volunteer, part-time board at the state level, it  
10 strikes me that there probably is a need to figure out a  
11 way where you can govern in a more efficient manner. My  
12 thought is that at the same time you're doing that  
13 you -- we need to focus on how do you do that in such a  
14 way that you remain responsive to ratepayers. When you  
15 talk about an independent board, I sometimes wonder what  
16 that independent -- who you're independent of, and I  
17 don't want in the name of efficiency alone to create  
18 something that is independent of the people it is  
19 supposed to be serving.

20 One of the questions -- and  
21 Al just kind of touched on it. One of the questions I  
22 was noticing on the makeup of the board of the  
23 recommended model, the only board qualification is that  
24 one ratepayer outside the city, I guess, has to serve as  
25 part of the seven. One of the questions that popped in

1 my mind was how much of -- what percentage of our  
2 ratepayers in Austin are ratepayers outside the city.  
3 When we talk about taxation without representation, are  
4 we -- is it one-seventh of the ratepayers outside the  
5 city?

6 PANELIST ERWIN: What is  
7 it, John?

8 MR. MOORE: About 15  
9 percent.

10 PANELIST WATSON: Okay.  
11 Then what that leads, then, is to other questions.  
12 Industrial, what percentage is industrial? Should we  
13 take into consideration residential, low-income  
14 residential and different ways of doing that so that  
15 what we do is maybe come about melding the best of all  
16 worlds?

17 PANELIST RILEY: Sam, let  
18 me follow up on comments that Al made and, also, Kirk.  
19 I think everybody around the room, and I assume within  
20 the room here, agrees that competition is coming and  
21 that is the fundamental purpose. And in terms of the  
22 goals -- I forget who suggested we start off by defining  
23 some of the goals. But I think the first page in this  
24 major handout of 2.1 talks about in order to be  
25 competitive you need to be nimble and focused,

1 fast-paced, flexible, have confidence in the capital  
2 markets; the governance structure of the Utility should  
3 support, not constrain, the competitiveness of the  
4 utilities; bond markets, customers, employees should  
5 have confidence in the governance of the Utility, and so  
6 on.

7 Now, kind of the  
8 off-setting issue that was raised by Kirk is  
9 accountability to the citizens. I guess one thing that  
10 kind of struck me in the other major handout that we had  
11 is that if we are not competitive there's certainly the  
12 potential if industrial and commercial customers go away  
13 for all of the residential folks to be paying \$74 a  
14 month additional. And the fact is, if we don't get  
15 competitive, that in and of itself is not being  
16 accountable to the citizens because we're going to let  
17 their rates go nuts. So it seems to me that we've got  
18 to focus on how to get competitive.

19 The San Antonio model, as  
20 Robert pointed out, they have lower rates, they make  
21 more money, they reinvest more. It's not a bad model to  
22 start looking at for starts, but in terms of why the  
23 partial rather than the full, I think the issue is how  
24 do you get competitive quickly. And the fact is that  
25 the three things that John listed, the rates, the debts,

1 the eminent domain, if you don't keep those in the  
2 Council, then you either have bond restructuring or you  
3 have legislation. One costs a bunch of money; the other  
4 costs a bunch of time.

5 So, again, it strikes me as  
6 a starting point the San Antonio model is both  
7 competitive financially, as Robert has pointed out, it's  
8 competitive timewise, and it certainly strikes me as a  
9 good starting point to look at. And only through being  
10 competitive can we be accountable to the ratepayers who  
11 ultimately are going to pay the bill.

12 MR. GRAHAM: Is the other  
13 model that you think is a serious note, John, the  
14 Jacksonville?

15 MR. MOORE: Yes. But we  
16 could not do the Jacksonville. It gives one more power  
17 to the board that would require some new legislation. I  
18 would like to point out in response to --

19 PANELIST SMITH: John,  
20 before you go on, which power does it give to the board  
21 that would require legislation?

22 MR. MOORE: Rate setting.  
23 Under state law, my understanding is that if it gets any  
24 one of those three, just any one of them. The San  
25 Antonio -- you know, the San Antonio --



1 PANELIST ERWIN: John,  
2 before we go on, just one point real quick. When we're  
3 talking about our alternatives here and the five  
4 different -- or the four different methods of  
5 governance, there's one thing we need to remember, and  
6 that is, the competition is not going to be Texas Power  
7 and Light or -- no. It's TU now -- or LCRA or  
8 anybody -- it's going to be Dow Chemical on the Gulf  
9 Coast. That's what's going to be our competitor. So  
10 structuring it too strictly and saying this is what they  
11 consider and this is what they can't consider, we're  
12 going to be in the same bind we're in.

13 We have a very  
14 representative EUC right now, but that's not taking care  
15 of the efficiency thing. What we've got to shoot at is  
16 the competition is going to come from Dow Chemical and  
17 Ford Motor Company and GE. That's where it's going to  
18 be. It's not going to be a traditional electric  
19 utility. So efficiency is still the key that we've got  
20 to go for.

21 MR. GRAHAM: Jim, had a --

22 PANELIST BARNSTONE:

23 There's some --

24 MR. GRAHAM: Excuse me a  
25 second, but Jim had a comment about five minutes ago and

1 so did Mr. Zuniga. Did we -- do you want to --

2 PANELIST MARSTON: I want  
3 to add a few things to the discussion. Number one, Al  
4 suggested that we have a well-run utility, and I think  
5 occasionally we overstate how poor our utility is.  
6 There's a lot of good things about this utility. Now, I  
7 think we ought to have on the record, number one,  
8 compared to investor-owned utilities in this state we  
9 have a heck of a record.

10 I mean, TU went through  
11 this kind of structure three years ago. It either laid  
12 off or gave early retirement to 40 percent of its  
13 employees because they were so fat and sassy. We had  
14 one electric utility in this state, an investor-owned  
15 utility, go bankrupt, a monopoly. You've got to be  
16 really inefficient to do that. We have another one,  
17 Gulf States, that had to be bought out because it was  
18 about to go bankrupt. It was bought out by a company  
19 that's out of state. We had -- HL&P has been found at  
20 least twice, maybe more, by the Feds for poor management  
21 practices.

22 Compared to that, we look  
23 pretty good, and there's a lot of things that we do  
24 better than San Antonio that cause us to have slightly  
25 different numbers than they do. Number one, we've had a

1 rate structure that has protected in a much better way  
2 the poor of this community very intentionally to try to  
3 keep universal service down to the lowest earning person  
4 in this community, and we ought to be proud of that.  
5 We've also invested in things that have long-term  
6 benefits that San Antonio has not.

7 We ought to be aware that  
8 there are things happening at the UN right now. There's  
9 a proposal pending to have a cap on -- international cap  
10 on CO2 emissions. If that would happen -- and it's  
11 pending now -- Austin would be in a great shape versus a  
12 lot of utilities because we plan for the long term.  
13 Those things affect us short-term, but in the long term,  
14 we may be very well positioned because we thought about  
15 those things.

16 We also probably have -- by  
17 doing some things with regard to our conservation  
18 programs, probably have delayed the time in which we're  
19 going to be a nonattainment area because we -- our power  
20 plants tend to be in the Southeast, and we run those  
21 less than we otherwise would have to because we have  
22 good conservation programs. Those are benefits that our  
23 utility is paying for that help low-income people, help  
24 our businesses expand. We probably couldn't get Samsung  
25 if we had not been a nonattainment area. So I just want

1 to make sure we have on the record the good things this  
2 utility has done.

3 Now, what I think we also  
4 ought to realize is, competition is coming, though it's  
5 not necessarily coming next week. Texas Utilities and  
6 HL&P are hiring everybody they can. They've hired even  
7 my friends in the consumer movement now to fight against  
8 this. They -- nobody has offered me a job yet, but  
9 they've hired everybody else to slow the process down.  
10 And it may not happen this legislative session.

11 Smitty always talks about  
12 this being a two-Lexus bill. In other words, it's going  
13 to take two legislative sessions with a lobbyist to get  
14 a Lexus each time before this one will pass.

15 PANELIST SMITH: They'll  
16 just want three.

17 PANELIST MARSTON: And,  
18 also -- I mean, that gives us a little time, and I must  
19 say my belief that it's going to happen overnight is  
20 jaded a bit by my experience in California where we've  
21 had -- I don't know -- at least 10 different firm  
22 deadlines about when it's going to start and never  
23 starts. We've got a firm deadline now and (inaudible)  
24 in the public side but give the day-to-day management  
25 about whether -- when you're competing on a 10-minute or

1 30-minute spot market to somebody else. In fact, that  
2 can't even be a board. That's got to be a manager. We  
3 don't solve that problem by a board. I just do think,  
4 though, those of us who appeared in front of the San  
5 Antonio board don't necessarily think it is perfect.

6 PANELIST ERWIN: I want to  
7 say one thing, though. Teaching a monopoly to compete  
8 is like turning an aircraft carrier. You've got to  
9 start pretty quick.

10 MR. GRAHAM: Maybe two  
11 aircraft carriers. Manuel?

12 PANELIST ZUNIGA: Yeah. I  
13 just wanted to mention that it looks like we're getting  
14 to the crux of the problem, which is a philosophical  
15 difference. Is our goal to make it -- you know, to keep  
16 a democratic portion of it? In other words, is our  
17 responsibility or our focus going to be to the  
18 ratepayers or is it going to be to the Utility? And I  
19 think there is a distinction there. It would be nice to  
20 say that there isn't, but there is a distinction. And  
21 so I think that we've come to the -- this is the crux of  
22 the problem and, I think, the reason that this decision  
23 is going to take us a while.

24 MR. GRAHAM: Len, did -- I  
25 cut you off. Do you still have your thought, Len Riley?

1 PANELIST RILEY: Yeah. But  
2 he changed the subject. So --

3 MR. GRAHAM: Robert?

4 PANELIST BARNSTONE: We're  
5 moving quite fast, and I think that one settling on the  
6 issue of whether we're going to have an independent  
7 board -- and Al has raised it, Jim has raised it, and  
8 Kirk has raised it, and Manuel has emphasized it, and I  
9 think it's a very key question that has to be answered.  
10 And that question is, who do these board members owe  
11 their fiduciary to?

12 This is an enterprise of  
13 the City of Austin. By "enterprise," it means that  
14 we're in it for the money. We're supposed to make money  
15 at it. That's a subjective. And it's owned by the  
16 taxpayers of the City of Austin. Now, when I say that  
17 "who we owe our fiduciary to," it does not mean that we  
18 are unconcerned about out-of-city ratepayers, customers,  
19 suppliers. Any business is responsible to a whole host  
20 of people. The question of fiduciary responsibility is  
21 whose interest do you put first, who do you represent as  
22 a board member, and I think that's exactly the point  
23 that Manuel was getting at -- or got at. Excuse me,  
24 Manuel.

25 And we need to look at that

1 and answer the question especially because it will be in  
2 the charge of this new board, "You owe your fiduciary  
3 to...," and I think the answer there is the taxpayers of  
4 the City of Austin. Be responsible. Be responsible to  
5 your customers, be responsible to your employees, be  
6 responsible to everyone else, but your duty is to the  
7 taxpayers of the City of Austin.

8 PANELIST ZUNIGA: As  
9 opposed to the ratepayers or as opposed to whom?

10 PANELIST BARNSTONE: Your  
11 ratepayers are your customers.

12 MR. GRAHAM: The question  
13 was, as opposed to ratepayers or as opposed to whom? Go  
14 ahead, Robert.

15 PANELIST ZUNIGA: Or the  
16 citizens.

17 MR. GRAHAM: The citizens,  
18 yeah.

19 PANELIST BARNSTONE: Or the  
20 citizens. In other words, if the answer was you owe  
21 your fiduciary to the ratepayers, then we're talking  
22 about setting up a cooperative. And that's what it  
23 would be, a cooperative electric utility. Am I wrong?

24 MR. MOORE: That would seem  
25 to be right since we serve ratepayers who are not

1 citizens of Austin.

2 PANELIST BARNSTONE: So,  
3 again, the question is, are we a cooperative? I don't  
4 believe we are. I believe that this is an enterprise  
5 that's owned by the taxpayers of Austin, and as such its  
6 representatives must owe their duty -- their fiduciary  
7 duty to the taxpayers of Austin. This colors the  
8 appointment of the board.

9 PANELIST URDY: I think  
10 that's very much so and I think that's true. I think  
11 the fiduciary responsibility is to the owners, but you  
12 now no longer have ratepayers. All these folks now,  
13 including the citizens of Austin, are customers, and the  
14 board will have to represent the customers and they have  
15 to be responsible to those customers, wherever they are.  
16 And that has to be part of the decision, who are you  
17 going to serve and all that. Those are your customers,  
18 and to maximize it or to meet that fiduciary  
19 responsibility to your owners, you've got to have  
20 customers. Any of these customers now in this new  
21 scenario could leave, including your citizens of Austin.

22 So you've got to have a  
23 customer service orientation, and that board has to be  
24 representative from top to bottom. I mean, they have to  
25 be not just coming from among them. I don't think that



1 kind of representation will serve you very long. I  
2 mean, they have to come from among them, but they also  
3 must have that kind of orientation and expertise to be  
4 able to speak for them and to work for them. You will  
5 have to make a -- you know, you're going to have to sell  
6 your services to these customers, and this is a totally  
7 different orientation from having a prescribed service  
8 area with a service mandate. So, you know, you're a  
9 business. You are now a business out hustling customers  
10 like every other business.

11 PANELIST ZUNIGA: Yeah.

12 But in a typical business, you don't -- your customers  
13 are not on your board of directors or anything like  
14 that. Your customers -- what you're saying is  
15 absolutely right, but, you know, your customers do not  
16 run your business.

17 PANELIST URDY: Well, that  
18 may very well be true, but I'm not sure that's  
19 altogether what --

20 PANELIST RILEY: Maybe in  
21 some short-lived businesses that's true. We have a  
22 model that we used to communicate internally that shows  
23 three large goals that are interconnected, and I won't  
24 get us off on a tangent. One has customers, the other  
25 has shareholders, and the other has employees. If we

1 don't have customers, we won't have a business, the  
2 shareholders won't gain. If we don't have a business,  
3 the employees don't have a good place to work. I mean,  
4 it's a three-way thing that you're trying to optimize.  
5 And I was thinking, as Robert was crisping up the  
6 question of to whom do we owe the fiduciary  
7 relationship, it's hard for me to see how we could  
8 service the citizens of Austin and bring them whatever  
9 return we are to bring them if we didn't have our mind  
10 fundamentally focused on the ratepayers. I think  
11 Charles said it excellently. Without customers, there  
12 is no utility, and I don't know what benefit we then  
13 bring to the city.

14 PANELIST WATSON: But there  
15 are a couple of other things to take into consideration.  
16 Jim alluded to one of the good things that the Utility  
17 has done in terms of avoiding nonattainment. Under the  
18 federal Clean Air Act, if this city finds itself in a  
19 nonattainment situation, it's going to be a big  
20 difference to both the citizens and the ratepayers. So  
21 there will be decisions that I think will ultimately  
22 need to be made by a utility that are more holistic, if  
23 you will, than simply what is going to be the rate we  
24 pay, because if what you do is you set up a situation  
25 where you have to put in a new plant, that new plant

1 causes nox to be a big part of our air which causes us  
2 to go into nonattainment, then you've got a different  
3 problem.

4 I hear some of the same  
5 things being said, though, and that is, if you're going  
6 to approach this, the way you can approach it is -- and  
7 that is what prompted my initial comment, was I look at  
8 board qualifications and the only qualification is that  
9 one ratepayer is outside the city. I have found that  
10 boards that operate with a broad spectrum of views, that  
11 are impacted by the decisions that are being made by an  
12 entity usually end up making better holistic -- and many  
13 times voting against what you might think their  
14 reactions would be.

15 For example, it strikes me  
16 that -- and I don't know whether these numbers work out  
17 in terms of taxation without representation, but we  
18 ought to be looking at whether or not a qualification  
19 should be that one of the members of the board be an  
20 industrial, be involved in the industrial segment, an  
21 industrial user, if you will; residential, low-income  
22 residential; health; customer. And I'm just making this  
23 up as I go along in terms of throwing out ideas. But  
24 that way you help achieve the answer to the question of  
25 since it's an enterprise owned by taxpayers and you owe

1 your fiduciary duty there. We need to be thinking about  
2 rates, we need to be thinking about the holistic  
3 approach, and do we best achieve the fiduciary duty on  
4 an overall basis.

5 PANELIST BARNSTONE: There  
6 may be another way of achieving that other than the type  
7 of segmentation of the board that is being suggested.  
8 And that has to do with simply -- under state law, we  
9 already have considerable council powers that will be  
10 retained in rate setting, debt issuance, eminent domain  
11 and so forth. And, also, of course, there are others,  
12 appointment. How about the tenure of the board member?  
13 Could he be fired at will? You know, there are a number  
14 of safety valves that can be put into this practice. I  
15 think we ought to explore those together because if --

16 PANELIST WATSON: Robert, I  
17 agree. I don't disagree with that at all. My whole  
18 point is, when you're --

19 PANELIST BARNSTONE: You  
20 want to look at it holistically, and you don't want them  
21 to be too focused on making money.

22 PANELIST WATSON: That's  
23 right. And to some degree, I have difficulty with the  
24 idea that you can appoint yourselves with a rubber stamp  
25 from the city because that, I think, sometimes leads to

1 everybody looking the same, everybody thinking the same,  
2 that sort of thing, when you need a broader approach.  
3 I'm not suggesting that's the only way to assure that  
4 the fiduciary duty is reached. It was just one of the  
5 things -- when I was asked to speak at the beginning, it  
6 jumped out at me that that was the only qualification.

7 MR. GRAHAM: And that you  
8 have one registered professional engineer and you have  
9 one attorney.

10 PANELIST MARSTON: That's  
11 not the San Antonio --

12 MR. GRAHAM: Oh, you're  
13 exactly right. I thought you were looking at EUC --

14 PANELIST MARSTON: When we  
15 go under the proposal from at least three places to one  
16 place --

17 MR. GRAHAM: Uh-huh.

18 PANELIST MARSTON: -- and  
19 lose the requirement of some expertise that the current  
20 commission has to have.

21 MR. MOORE: Let me make  
22 clear. On 2.14, that makeup of the board, that's Price  
23 Waterhouse's recommendation. That's not a San Antonio  
24 requirement.

25 PANELIST WATSON: But I

1 understand that's with one qualification. And to some  
2 degree, I'm speaking from -- under the legislation that  
3 created the Texas Air Control Board, you had to have a  
4 doctor that was involved in industrial medicine. You  
5 had to have an engineer -- you had to have two or three  
6 engineers. In fact, I was around so many engineers  
7 there for a while -- the Aggie engineers, I started to  
8 understand what "hullabaloo commit-commit" (phonetic)  
9 meant and it was time to get going. But they had  
10 different requirements of different types of people, and  
11 what I found there was, it brought some emphasis from  
12 time to time on things that wouldn't occur to some  
13 people.

14 PANELIST ERWIN: Yeah. But  
15 on the other hand, let me tell you something. As a  
16 former employee of Dow Chemical, industrial doctor meant  
17 Dow's doctor. So you still have a threshold problem.

18 PANELIST WATSON: It didn't  
19 with Ann Richards but --

20 PANELIST ERWIN: Yeah. But  
21 let me tell you something. That was an exception.

22 PANELIST SMITH: Well, I  
23 think what it sounds like, as I've heard people around  
24 here, there's a general consensus that competition is  
25 coming and that we're going to have to get a lighter,

1 faster, more rapid fireboard and that there seems to be  
2 a lot of consensus at something like the San Antonio  
3 model is probably a good idea. I think that as Kirk has  
4 pointed out there are a number of uniquely Austin  
5 concerns in terms of composition we need to look at.  
6 And as Marston has pointed out, there are a number of  
7 things we've done extremely well that have made us not  
8 only a clean utility and a forward-thinking utility but  
9 also perhaps one of the most competitive utilities in  
10 the state because our bills are significantly lower than  
11 all of our competitors and our -- our bills, not our  
12 rates, Al, bills, with a "b," key difference.

13 PANELIST BARNSTONE:

14 Smitty, I hate to tell you. That's because the rates  
15 are so high.

16 PANELIST SMITH: That's

17 fine. And it is the bills that people are going to be  
18 concerned about when making the decision as to whether  
19 to stay with the City of Austin or switch to Central  
20 Power and Light or to Texas Utilities. It's the bills  
21 for TI that they're going to be concerned about.  
22 Certainly the incremental cost or the next unit of power  
23 is critical to them, but if there's a contract that says  
24 we're going to come in and do the most efficient  
25 retrofit on your plant that technology allows us and

1 their bills plummet, regardless of their rates, they're  
2 going to be happy customers.

3 And it is that kind of very  
4 forward-thinking work over the last decade that has  
5 positioned us in a competitive position far better than  
6 any of our regional competitors. And it is that kind of  
7 thing that has taken other utilities, like Sacramento  
8 Municipal Utility, into positions where they're looking  
9 far into the future, helping people put solar cells in  
10 their homes, helping people look at fuel switching as  
11 methods of reducing their energy bills and coming up  
12 with the most efficient way to provide for their total  
13 energy needs. And that's something a municipal utility  
14 can do, and we need to look at structures to position  
15 ourselves in a very forward-thinking and aggressive  
16 position rather than being a reactive utility like the  
17 City of San Antonio has been for much of the last 20  
18 years.

19 MR. GRAHAM: So if a new  
20 governing entity is created, you don't want to lose the  
21 flexibility or the advantage or the resource to look  
22 ahead and be forward-thinking.

23 PANELIST SMITH: And  
24 enhance it, more importantly.

25 MR. GRAHAM: And what



1 Mr. Marston has been pointing out are some of the  
2 things that the Council, despite not having enough time,  
3 has some of the benefits we have under our present  
4 setup. We're going to stop at this point and take a  
5 five-minute break.

6 (At this time, a brief  
7 recess was taken, after which time the proceedings  
8 continued as follows:)

9 MR. GRAHAM: Our objective  
10 is to stop at 8:30. I have a list of five persons who  
11 would like to ask questions to the panel -- or to the  
12 group. If anyone else wishes to do that, there's a  
13 sign-up sheet at the back to -- on the table just to my  
14 left of the doors. So if anyone came in after I made  
15 that announcement, if you'd sign up on the citizen  
16 communication sheet and I'll ask -- call on these -- I  
17 still act like when I was a fifth grade teacher. I'll  
18 call on these people in the order of the sign-up.

19 We're going to again  
20 discuss for, oh, 15, 20 more minutes the general concept  
21 of changing the way the Utility is governed, and then  
22 I'd like to go back over what's been said and see if I  
23 can list perhaps 5, 10, 15 major points on the board  
24 behind me. After that we'll hear from any citizen that  
25 has signed up, and I would like -- my instructions -- or

1 the request was that communication be more in the form  
2 of a question than an editorial comment.

3 Is that -- Teresa, was that  
4 your understanding of the committee in setting this up?

5 COMMISSIONER REEL: (Nods  
6 affirmatively.)

7 MR. GRAHAM: Okay. Her  
8 mouth is full of cookie, but she nodded. So with that  
9 let's pick back up. I think there has been a general  
10 consensus that the present method of governing the  
11 Utility, which is totally in the hands of the City  
12 Council, may no longer be the best way in the  
13 competitive -- the new competitive nature of the utility  
14 business. There have been comments made that we should  
15 not forget the benefit, though, that that has given to  
16 both the Utility and to the citizens of Austin, perhaps  
17 to the ratepayers and perhaps to the billpayers.  
18 There's also a very, very cogent comment that the main  
19 concern is the bill itself as opposed to the rates,  
20 although we can distinguish between that. And finally  
21 that the San Antonio system and San Antonio may on the  
22 surface appear to have a more efficient and smoother  
23 running utility, but it also may have some problems in  
24 the way that it's set up that Austin wouldn't be used  
25 to. And I'm trying to understate things.

1 So who wants to pick up  
2 now? Yes, sir?

3 PANELIST URDY: Well, I  
4 think -- and I hope as we refer to this we will use the  
5 word the "independent board" rather than the San Antonio  
6 system. The only thing that's relevant to us --

7 MR. GRAHAM: I think that's  
8 a great suggestion.

9 PANELIST URDY: -- because  
10 personally I think our utility is better than San  
11 Antonio's utility right now, but I think we do need that  
12 independent board. But beyond that, I think we have to  
13 design the rest of this to fit our own situation, and I  
14 think it's quite different from San Antonio's.

15 PANELIST BARNSTONE: I  
16 agree.

17 PANELIST ERWIN: Excellent.

18 PANELIST SMITH: I agree.

19 MR. GRAHAM: Anyone  
20 disagree with that statement?

21 (No response.)

22 MR. GRAHAM: Well, let's  
23 start designing it. This is a wonderful opportunity.  
24 This is a blank page we have here. What should be the  
25 basic concept? Should we -- the present advisory

1 electric utility commission is -- there's required to be  
2 a registered professional engineer, an attorney, and one  
3 ratepayer residing outside the city limits. And if I  
4 recall, each councilmember gets one appointee and there  
5 are seven people on the board. Is that a fair --

6 PANELIST BARNSTONE: I  
7 think it's a terrible formula.

8 MR. GRAHAM: Speak to me.

9 PANELIST BARNSTONE: Look,  
10 when General Electric goes about selecting their board,  
11 they don't pick people like that. I mean, they don't  
12 say, you know, we're going to pick one from Column A and  
13 one from Column B and so forth. They find the very best  
14 people that are available to serve. And so the main  
15 focus ought to be the qualifications of the individuals.  
16 We need the highest quality people we can find.

17 I was talking with Senator  
18 Herring here on the way over and we had an idea that I'd  
19 like to throw out, and that is that maybe Staff could do  
20 a little research and get a list of the people in this  
21 city who are presently serving on the boards of major  
22 corporations. Within that list, I think that we could  
23 find at least profiles, if not actual candidates, of the  
24 type of people that could serve on here.

25 PANELIST ERWIN: Robert,

1 let me make one comment about that. First of all, I  
2 want to tell everybody I'm still not convinced that an  
3 outright sale is not an alternative, but the board that  
4 you described is a good board; but it's a business  
5 board.

6 PANELIST BARNSTONE: That's  
7 right.

8 PANELIST ERWIN: If it's  
9 going to be a business, why don't we be a business and  
10 consider a sale to LCRA or to Texas Utilities or anybody  
11 else?

12 PANELIST BARNSTONE: Well,  
13 Sam had thrown that question out at the beginning, was  
14 that the way, and I think that issue has been decided.  
15 And I'm sorry to -- I hate to digress into that, but I'm  
16 going to answer very briefly. There's one overwhelming  
17 reason why a sale could not under current tax law be in  
18 the interest of the citizens of Austin, and that is that  
19 our entire 1.7 billion dollar debt would have to be  
20 refinanced at one-third higher interest rates. Those  
21 one-third higher interest rates would go into our rate  
22 base. So immediately we would get one-third higher  
23 electric rates. No amount of private efficiency could  
24 possibly make up for that alone. Shudde Fath has done a  
25 very good job of chronicling some of the property taxes

1 that we would have to pay to other jurisdictions, which  
2 we currently do not, and that list is quite staggering.

3 PANELIST ERWIN: So we're  
4 not even going to let a private utility or anybody else  
5 tell us if they would address that problem? That's what  
6 we've said basically, is that we don't want to talk  
7 about it, so we don't want to hear about it.

8 PANELIST MARSTON: But I  
9 simply suggest that's beyond the scope of our --

10 MR. GRAHAM: Well, I was  
11 going to interrupt both of you. That is certainly  
12 another solution or another issue, but that is not the  
13 one that we were all asked to discuss this evening.  
14 What we were asked to discuss was commenting on the  
15 existing method -- the existing way of looking -- of  
16 governing the Utility or an alternative one. Sale was  
17 not within that mandate. That is certainly an  
18 interesting topic that could take another night, two  
19 nights or four --

20 PANELIST MARSTON: Or more.

21 MR. GRAHAM: -- or more,  
22 but that is not within the purview of this evening.

23 PANELIST ERWIN: Okay. The  
24 interests are going home at 8:30. Let's throw it out.

25 PANELIST BARNSTONE: But

1 I'd love to debate it with you.

2 MR. GRAHAM: I have -- and  
3 as you can tell, I did teach fifth grade, but I wasn't  
4 good in spelling and I couldn't spell "independent," but  
5 that's independent. So how do we design an independent  
6 board? The first one, the EUC model, Robert thinks is  
7 terrible, right? But that is one alternative.

8 PANELIST BARNSTONE: Well,  
9 if you're talking about one council appointee per --

10 MR. GRAHAM: Yeah, just the  
11 Council appoints -- each one has one. You have -- we  
12 have three members must be of a certain type.

13 PANELIST BARNSTONE: Color,  
14 race, gender?

15 MR. GRAHAM: Sure. You  
16 could put all those things in there. You're squinting  
17 your eyes. Are we getting into too much detail now?

18 PANELIST MARSTON: I mean,  
19 I think those are separate issues, and I would agree  
20 that the idea that we have a delegate from each  
21 councilmember doesn't make sense. In a publicly owned  
22 entity where you have lots of interests at stake, not  
23 just maximizing short-term profits for the shareholders,  
24 I think some of those other considerations are relevant.  
25 And you probably do, too, Robert.

1 PANELIST BARNSTONE: Yeah.

2 And --

3 MR. GRAHAM: And the other  
4 thing -- go ahead.

5 PANELIST BARNSTONE: Let me  
6 tell you why one councilmember -- look, we want these  
7 people to pass a high threshold, and what you're saying  
8 is the threshold is one councilmember. Well, would it  
9 make more sense if there were at least four  
10 councilmembers as a threshold?

11 PANELIST MARSTON: On that  
12 point, I think we might have unanimity, that we  
13 shouldn't have one person -- one councilmember  
14 appointing a member to the board. I'll bet -- maybe I'm  
15 wrong, but I'll bet everybody agrees that we ought to  
16 leave that system. Now, I want to disagree with you on  
17 that point before we get to the three or four other  
18 points you were suggesting.

19 MR. GRAHAM: I mean, that  
20 system in which you have an appointee, no matter how bad  
21 that appointee may be, as long as you don't bother my  
22 appointment, I'll go along with yours. That's the worse  
23 case scenario.

24 PANELIST URDY: But I think  
25 those -- I agree. I think those are two separate



1 issues. How they get appointed and who they should be  
2 responsive to, I think that's what we need to address,  
3 first of all.

4 MR. GRAHAM: That's right.  
5 What are they responsive -- to whom? Whoever this  
6 independent -- how do you get this independent board?  
7 Who is it responding to? That's a threshold issue that  
8 we addressed earlier.

9 PANELIST URDY: And I think  
10 fundamentally they have to respond to their customers,  
11 whoever that's going to be.

12 PANELIST SMITH: Well,  
13 let's list our potentials because the people they have  
14 to respond to clearly are their customers, if they're  
15 going to keep them, but also the taxpayers who are the  
16 owners of this entity and whose sort of ability to live  
17 in the City of Austin and afford to live in the City of  
18 Austin is in some ways largely dependent on the quality  
19 of management of this asset.

20 PANELIST URDY: Yes, I  
21 agree. I think that's the same -- to me that's the  
22 same --

23 PANELIST BARNSTONE: You  
24 can list employees, too. Employees are also a  
25 stakeholder in this.

1 MR. GRAHAM: That's one of  
2 the things that Price Waterhouse points out that's so --

3 PANELIST BARNSTONE:

4 Dr. Urdy, I mean, responsive is a nice word, and, of  
5 course, they should be responsive to the customers, no  
6 doubt about it. You cannot run a business without being  
7 responsive -- highly responsive to your customers.  
8 We're really talking about a fine legal point, and that  
9 is fiduciary duty because there will be times when that  
10 question will come as to who that person owes their duty  
11 to. And if the answer is as -- if the answer is -- and  
12 I don't know that that's what you mean, but if the  
13 answer is the customers, then this is a cooperative.  
14 We've converted our city-owned, taxpayer-owned electric  
15 utility into a cooperative, and that's a fundamental  
16 question. I mean, you know --

17 PANELIST ZUNIGA: Let me  
18 draw one distinction here.

19 MR. GRAHAM: This is the  
20 area where I practice law. And so what you're saying  
21 is, they owe the highest obligation as a fiduciary to  
22 someone out there. Maybe it's the customers, maybe it's  
23 the ratepayers, maybe it's the taxpayers.

24 PANELIST BARNSTONE:

25 Exactly.

1 MR. GRAHAM: But the other  
2 question is, what type of abdication of control do you  
3 advocate from the City Council? Is this really a board  
4 in which is totally autonomous or is it a board -- other  
5 than those three, other than the areas where you cannot  
6 delegate?

7 PANELIST SMITH: And, yes,  
8 I would argue that's where we need to be going if, in  
9 fact, this is to be a board that can respond rapidly.  
10 It is total abdication with the exception of those three  
11 things and the power to appoint. At least that's my  
12 understanding here. It should not -- the sort of  
13 consensus I have from around the table is people don't  
14 want a self-appointing or a self-replicating board.

15 PANELIST ZUNIGA: I want to  
16 add a distinction that might be helpful, and that is,  
17 the responsibility of an individual member of that board  
18 may be different than the board itself, you know,  
19 because there may be somebody on that board who was on  
20 that board to represent just residential ratepayers.  
21 And so I'm talking about -- so, I mean, I think that  
22 distinction might be helpful.

23 MR. GRAHAM: So should  
24 board members be from a particular interest or  
25 constituency?

1 PANELIST RILEY: I think  
2 you will never get to the goal stated on Page 1 about  
3 flexibility, quickness and so on if you have a  
4 collection of nine individuals representing their own  
5 constituencies.

6 PANELIST WATSON: Since I  
7 was the first one to raise the issue of board  
8 qualifications --

9 PANELIST MARSTON: Kirk,  
10 you need your microphone.

11 PANELIST HERRING: Can I  
12 ask a question?

13 MR. GRAHAM: Yes, sir.

14 PANELIST HERRING: Are we  
15 talking about a full-time board, or are we talking about  
16 a board that meets once a month or some period of time?  
17 And aren't we talking about a general manager that will  
18 run the organization subject to the approval of the  
19 board?

20 PANELIST SMITH: Yes.  
21 Let's all agree on that. That's a good point.

22 MR. GRAHAM: And that is a  
23 very basic question.

24 PANELIST HERRING: If  
25 you're going to have a part-time board, then you ought

1 to get the most capable and intelligent people you can  
2 get as board members who probably would serve for  
3 nothing.

4 MR. GRAHAM: So we're  
5 talking about a board that is not -- that's full-time  
6 but does not -- doesn't meet every week, doesn't meet  
7 every day?

8 PANELIST HERRING: Once a  
9 month would be enough.

10 PANELIST ERWIN: I think he  
11 hit the nail on the head, is that management is not --  
12 the board is not full-time. The management is vested in  
13 the management. It's an advisory board.

14 PANELIST SMITH: And there  
15 can be some variance on that. And one of the questions  
16 we may have to face later on tonight or tomorrow is  
17 whether we want to do something like they have in  
18 Sacramento, which is to create an executive committee of  
19 the board that has a much tighter management control. I  
20 suspect that David Freeman will tell you that's a very  
21 bad idea.

22 PANELIST ERWIN: How big is  
23 their board, Smitty?

24 PANELIST SMITH: I don't  
25 recall. It's a bigger board. And that brings us, then,

1 to another model which I want to posit, and that is an  
2 elected board as opposed to an appointed board. And let  
3 me throw that out as much more representative of the  
4 city and certainly one that will allow people to have  
5 some real input and to create a forum periodically for  
6 debate over where the Utility ought to go in the future.  
7 And I can argue both sides of this coin.

8 PANELIST ERWIN: Smitty,  
9 that's the only thing I can think of that's more  
10 inefficient than what we've got.

11 PANELIST SMITH: I'm not  
12 sure that's possible, Al, but --

13 PANELIST URDY: Let me  
14 throw out a known successful model. Senator Herring  
15 will agree with me on this. This is the LCRA board.  
16 It's prescribed how they will be appointed. They're  
17 appointed members and they represent basically  
18 geographic areas.

19 PANELIST BARNSTONE: And  
20 they're a cooperative.

21 PANELIST URDY: Well,  
22 that's all right. I'm saying, you know, it's -- I don't  
23 care what we call it, but I -- and what they do is -- I  
24 think this does work. They represent -- or they  
25 together represent certain customer classes. Somehow in

1 this structure there has to be -- you have to develop a  
2 system that brings together all of these different  
3 customer classes because the competition is going to be  
4 for different customer classes. It's going to be  
5 residential over here or industrial over here or small  
6 business or something, and I think you've got to deal  
7 with those issues and you've got to develop your system  
8 based on your ability to serve all of those different  
9 types of customers successfully.

10 PANELIST RILEY: Charles --

11 PANELIST URDY: Otherwise,  
12 it's not going to work at all.

13 PANELIST RILEY: -- how  
14 often does that board meet?

15 PANELIST URDY: Once a  
16 month.

17 PANELIST RILEY: And they  
18 do not micromanage?

19 PANELIST URDY: No. They  
20 have a general manager.

21 PANELIST RILEY: Okay. A  
22 comment, at least for me, the Sacramento executive  
23 committee, to the extent it is managing the thing, I  
24 think the worse thing in the world that we could do is  
25 to try to micromanage John and his team, who I might say

1 in my view have been performing with excellence, and I  
2 certainly do not want to break that.

3 MR. GRAHAM: One model  
4 which I haven't heard yet -- of course, yet is, you  
5 could have -- similar to the county commissioners, you  
6 could have three or five persons elected, full-time,  
7 paid salaries, they manage. No one has mentioned that.  
8 I'm not writing it on the board. Okay. I wanted to  
9 eliminate the obvious.

10 PANELIST WATSON: Let me go  
11 back. What Dr. Urdy is saying about the way the LCRA  
12 board operates gets back again to some of the things  
13 that have been said over and over, and I want to make  
14 sure I'm clear on something. When you look at a  
15 composition for a board, it doesn't necessarily mean  
16 that you are appointing advocates of certain positions.  
17 Their fiduciary obligation is to the entire -- the  
18 entirety of what they're approaching, but what you can  
19 do is -- by putting people from different bases,  
20 different points of view is you get a better approach in  
21 my view to the complete picture.

22 PANELIST HERRING: But  
23 that's what the LCRA board is, five members that are  
24 from the customers.

25 PANELIST WATSON: That's my



1 point exactly.

2 PANELIST HERRING: I beg  
3 your pardon?

4 PANELIST WATSON: I said  
5 that's my point exactly, is that --

6 PANELIST HERRING: And,  
7 also, you have Rascor (phonetic) down the street, and  
8 each county is a watershed, each county has a member.  
9 So it represents the whole thing and they work together  
10 and very seldom have to fuss about it.

11 PANELIST WATSON: And  
12 that's what my point exactly, and what I'm responding is  
13 something Mr. Zuniga said. My -- when I throw out --  
14 threw out the idea of let's look at different  
15 qualifications, I'm not saying you appoint somebody and  
16 you say, now, your job, no matter what, is to represent  
17 just a certain constituency, because that wouldn't work.

18 PANELIST BARNSTONE: Well,  
19 then why don't we agree on that one simple thing, if we  
20 agree on that, and that is, while there may be diverse  
21 representation, while there may be a formula or  
22 whatever, that in any case the duty of these board  
23 members -- the fiduciary duty of these board members is  
24 to the taxpayers of Austin.

25 MR. GRAHAM: Yeah. I think

1       that's --

2                               PANELIST BARNSTONE: Well,  
3       that's an important point.

4                               MR. GRAHAM: Manuel, did  
5       you get --

6                               PANELIST ZUNIGA: Yeah. I  
7       think that would be great. I guess that's -- my mistake  
8       is not -- what I need to do is not to fall prey to what  
9       we've done in the past, you know, and said, you know,  
10      it's us against them. And so I think your suggestion is  
11      well-taken.

12                              PANELIST BARNSTONE: May  
13      I -- you know, John Moore has sat here very quietly, and  
14      he has an enormous amount of experience running the  
15      Utility obviously and dealing with various boards. And  
16      that is really one of the main problems with the present  
17      system that we have, is that Staff feels uneasy about  
18      really leveling and saying, guys, this is what I think.  
19      So, John, it's really time.

20                              MR. GRAHAM: Now, how long  
21      is the contract, John?

22                              PANELIST BARNSTONE: I  
23      mean, really what do I think.

24                              MR. MOORE: Well, I think  
25      the San Antonio model is a good model, and I know that

1 we have a lot of concerns based on their practices. But  
2 the fact is, if they have control over setting rates,  
3 they can affect essentially everything about you. You  
4 know, if you appoint somebody they don't like or you do  
5 this or you don't do that, you know, they could change  
6 the rates anytime. That's not the practice. It hasn't  
7 been the custom in San Antonio, but the council can  
8 exercise a lot of authority, also issuance of debt. So  
9 I think there's a chance for a board that's pretty  
10 independent to still be under strong ties, strong  
11 signals from the Council.

12 PANELIST BARNSTONE: Okay.

13 But what do you think? In other words, what kind of  
14 board would you like to work with given all these  
15 questions that Sam is putting on the --

16 MR. MOORE: Well, let me  
17 just -- let me back up just a second. I think that --

18 PANELIST BARNSTONE:

19 Because they could fire you.

20 MR. MOORE: Right. Well,  
21 I'd like one that wouldn't do that, but --

22 MR. GRAHAM: I'll put this  
23 at the very first.

24 PANELIST SMITH: Doesn't  
25 have the power to fire John.

1 MR. MOORE: I like the idea  
2 of, you know, trying to have a diverse board but the  
3 point that nobody is there for a single mandate. Within  
4 that, though, I think it is important, it would be  
5 useful from a customer standpoint, to have at least one  
6 representative that could speak for ratepayers outside  
7 the city limits even though that board's primary duty is  
8 to, as I believe the City of Austin always has, make  
9 money out of running the utility.

10 When we talk, it just  
11 automatically flows out that we want to take care of the  
12 ratepayers, but we never make decisions that favor the  
13 ratepayer over the taxpayer here. We make as much money  
14 out of this utility as we possibly can every year. And  
15 if that's going to be different, a cooperative as you  
16 say, Robert, then you may want to think of the board  
17 differently. But I think it would be useful in dealing  
18 with the fact that we've got other communities, as the  
19 world becomes more competitive, to have some  
20 representation from Westlake or far northwest or far  
21 southwest or far east or whatever, at least some partial  
22 representation there.

23 PANELIST BARNSTONE: Should  
24 the board nominate its successors?

25 MR. MOORE: I think the way

1 San Antonio does it -- which the practice has been one  
2 thing. It's changing. I think the board ought to  
3 nominate its successors and the Council ought to  
4 approve. I would have a lot of problems with an elected  
5 board.

6 MR. GRAHAM: John, what  
7 you're also saying is, because the retaining of the --  
8 what I put as the big three by Council, through that the  
9 Council still has a great deal of input as to the  
10 actions of the, quote, "independent board"?

11 MR. MOORE: Yes.

12 MR. GRAHAM: I checked  
13 "fiduciary" because we're all in agreement that there is  
14 a fiduciary obligation and also that no one would  
15 propose a board -- none of this group would propose a  
16 board in which the members would report. Our main  
17 allegiance was to a special group, special interest or  
18 even if you used geographical basis. From your  
19 experience at the LCRA, those members, once they're on,  
20 look into the interests of the entire LCRA and not the  
21 rice farmers or not the Uplands, so on, and that would  
22 have to be very clear.

23 PANELIST URDY: Right.

24 MR. GRAHAM: The format  
25 that we've talked about would be a board but not a

1 day-to-day board with general authority, day-to-day  
2 operations run by a general manager. John just felt --  
3 or stated strong reservations about an elected board.  
4 Is that the consensus?

5 PANELIST URDY: Yes.

6 PANELIST MARSTON: Yes.

7 MR. GRAHAM: Okay. I'm  
8 going to put a big check out here.

9 PANELIST SMITH: I don't  
10 think it's a consensus. I think it's something we ought  
11 to discuss a little bit more thoroughly.

12 MR. GRAHAM: Okay.

13 Let's --

14 PANELIST SMITH: I think  
15 there are reasons why an elected board could be a real  
16 advantage to us. I think it could provide us for that  
17 kind of representation that we need from various kinds  
18 of districts. It does engender discussion about the  
19 future of the Electric Utility in a very public way that  
20 we don't get very often here. I've been in Austin now  
21 16 years, and I think, while there have been a lot of  
22 debates that's headed by electric utility junkies like  
23 most of us in this room, it wasn't until we really  
24 started talking about the sale of the Electric Utility  
25 that it began to be front-page news and people really

1       cared about it. And we've had an election about the  
2       sale of the nuke years ago that also triggered a lot of  
3       debate. But with the exception of those two occasions  
4       in 16 years, it's been a very kind of quiescent kind of  
5       operation. And I think that an election, if we finance  
6       the elections publicly, could allow us to really control  
7       our utility in perhaps the best way possible.

8                       MR. GRAHAM: So you're  
9       talking about no contributions and the Utility pays for  
10      the election?

11                      PANELIST SMITH: Yep.

12                      MR. GRAHAM: Manuel?

13                      PANELIST ZUNIGA: I think  
14      that would lead to government by soundbite, and I think  
15      that's the worse thing we could do. The discussion  
16      publicly is always going to be very superficial. If you  
17      talk too much about the specific issues in an election,  
18      the voter doesn't want to listen. I think that we have  
19      the vehicle by which the public has input, and that is  
20      through the Council. The Council is the big dog in this  
21      discussion. So really we don't need any more than that.

22                      PANELIST ERWIN: I'd like  
23      to add one more point as a former chairman of the state  
24      commission. I went to NERC (phonetic) meetings, Smitty,  
25      and the elected commissions were fairly consistently

1 either totally controlled by the utility they were  
2 supposed to be regulating or they were totally  
3 controlled by people who vowed never to grant another  
4 rate increase in the history of the commission. So they  
5 were one extreme or the other, and the elections hinged  
6 on that.

7 PANELIST MARSTON: Are you  
8 saying our PUC is different than one of those extremes?

9 PANELIST ERWIN: Yes.  
10 Appointed commissions are different.

11 PANELIST MARSTON: I'm  
12 sorry. That was too easy for me.

13 PANELIST BARNSTONE: And  
14 that's a regulatory body. I mean, I think very simply  
15 is that I can't think of a single business enterprise  
16 that's ever run successfully with -- you know, this size  
17 with a --

18 MR. GRAHAM: Well, Robert,  
19 you theoretically elect a board of directors by  
20 shareholders, and it certainly is not public campaigning  
21 and it's not election by soundbite. On the other hand,  
22 the idea of utility funding and other limitations on the  
23 electoral process, if you can get that through, that  
24 certainly might answer this problem.

25 PANELIST SMITH: And



1 certainly the co-op movement is a classic example of  
2 electoral democracy that works very well and has  
3 engendered lower bills and rates than the investor-owned  
4 utilities have in the State of Texas. Speaker Laney  
5 came initially to the state legislature because he was a  
6 person who campaigned very, very hard to become  
7 president of his local electric co-op and gained  
8 prominence in his community through that kind of  
9 electoral politics and more grassroots than perhaps  
10 anything we have left in Texas because there isn't a  
11 whole lot of money in -- traditionally up until this  
12 last little deal where everybody in the world was trying  
13 to bid for the City of Austin and the governance of the  
14 Electric Utility. It has been generally something where  
15 people have done that out of belief that what they could  
16 do is speak for the community, and the decisions are  
17 much more profound than they entrust to an appointed  
18 board.

19 PANELIST BARNSTONE: May I  
20 just ask you this question: On qualifications alone,  
21 are you more likely to have a higher qualified board  
22 member if he were appointed than if he were elected?

23 PANELIST MARSTON: What you  
24 ask Robert, you're the only one -- or one of two people  
25 that got elected here -- no. Wait. Senator Herring,

1 too, three people.

2 PANELIST BARNSTONE: It was  
3 a fluke.

4 PANELIST URDY: The problem  
5 that I have with it you have part of the same problem  
6 you had with the City Council. One of the problems the  
7 Council has is elections. And during that period, you  
8 know, that time goes longer and longer after a while,  
9 maybe a year long if you have a difficult race, you're  
10 paralyzed. I mean, you're not going to get rapid  
11 response on this issue if your board is out campaigning  
12 for reelection and, you know, making promises to voters  
13 to get elected. I mean, I just don't think it can  
14 possibly work myself.

15 MR. GRAHAM: There are  
16 different views as to whether an election would be the  
17 prudent thing to put on this board. Okay.

18 PANELIST SMITH: Let's go  
19 around and check. I mean, I may be the only advocate  
20 for election on this particular group. So --

21 MR. GRAHAM: If you really  
22 want a question on that, okay.

23 PANELIST SMITH: Let's see  
24 if we can cut to the chase.

25 MR. GRAHAM: We have one

1 advocate for an elected board.

2 PANELIST ZUNIGA: I say no.

3 PANELIST BARNSTONE: You're  
4 a brave man.

5 MR. GRAHAM: We have one  
6 advocate. Any other advocates? Yes, sir?

7 PANELIST MARSTON: Part of  
8 what this board needs to do probably is similar to what  
9 the City Council ought to do, and that is to give more  
10 authority to management. A lot of the concerns we've  
11 heard about this board are not related to whether we  
12 have an independent board or a city council. The  
13 problem may be exacerbated because the City Council is  
14 elected and worried about one of the morning talk shows  
15 making fun of them for \$5,000 being spent a certain way.  
16 But the truth is, the need is whether we have an elected  
17 board -- I mean, an independent board or the City  
18 Council, and we need to have more authority for  
19 management to make purchasing decisions.

20 PANELIST BARNSTONE: Let me  
21 just say this.

22 PANELIST MARSTON: Right.

23 PANELIST BARNSTONE: It's  
24 hard for that to happen.

25 PANELIST MARSTON: I agree.

1 But I think -- well, my point is, we need to go to the  
2 community and say management has to make some decisions.  
3 Capital Metro is an independent board. Okay. The same  
4 talk shows -- every time Capital Metro dares spend money  
5 for anything, they get pilloried on the radio or the  
6 like. Management has to have authority to make  
7 decisions, and we need to start educating the public  
8 that we -- that in with public entities management is  
9 going to have to do that and we're not going to get to  
10 second-guess every 5,000-dollar decision, whether it's  
11 the City Council or the independent board.

12 MR. GRAHAM: So one of your  
13 points is, just the creation of a board does not mean  
14 the Utility is going to be run in a more businesslike  
15 manner with a faster response time? In fact, you could  
16 be creating a board that would do just the opposite if  
17 it got into micromanagement?

18 PANELIST MARSTON: Right.

19 MR. GRAHAM: And that is --  
20 an insulation from that or some type of protection from  
21 that is --

22 PANELIST MARSTON: We need  
23 to, I think, say from the -- as part of the -- maybe not  
24 the legal structure, but as part of the admonition to  
25 the board that management has to be given authority, and

1 that's -- and even though it's a public entity, it's got  
2 to be managed --

3 PANELIST BARNSTONE: You  
4 want good management.

5 PANELIST MARSTON: I agree.  
6 But part of your management is letting management --

7 PANELIST ERWIN: You want  
8 it to have strong management.

9 PANELIST MARSTON: Strong  
10 management, that's right.

11 PANELIST BARNSTONE: I  
12 couldn't agree more. And let me just say, when Disney  
13 meets, you don't think that Michael Eisner is in there  
14 saying, fellows, we're going to do this, we're going to  
15 do this, we're going to do this, this is the plan and so  
16 forth? As a matter of fact, the LCRA is a very good  
17 model in that sense. And, again, our process right here  
18 is not easy on Staff. Staff is not completely free to  
19 say this is crazy or we need to do this or have you  
20 thought of that. We don't get that wane of opinion.  
21 The LCRA, I think the general manager has much more  
22 leadership involved in that. But I think that that will  
23 naturally happen if you appoint the board. They'll get  
24 their on working relation.

25 PANELIST RILEY: Sam, I

1 think there's consensus on that point, but I also think  
2 that a minute ago you were saying it would be hard to  
3 do. And I was getting ready to agree with you because  
4 there are a lot of examples around this town where  
5 that's not working. So I think one of the major actions  
6 to make this successful is we have to do a major  
7 campaign in this town to tell people that John and his  
8 team can win in this competitive environment. I believe  
9 he can and I believe everybody around this table thinks  
10 that he can, but there are some cultural issues to  
11 overcome in allowing him to do that.

12 PANELIST WATSON: You've  
13 got to let the manager manage or the executive director  
14 direct.

15 PANELIST ZUNIGA: Or, if  
16 not, we'll fight them all.

17 MR. GRAHAM: There may not  
18 be a traditional way in this city for things to be done.  
19 I think it was one of the members -- I think it was Jim  
20 who mentioned the high degree of democracy we have in  
21 this community. So -- and it's the line between a high  
22 degree of public input and letting management manage,  
23 something -- this community resource.

24 MR. MOORE: Sam, could I  
25 add something to this?

1 MR. GRAHAM: Yes.

2 MR. MOORE: I think, you  
3 know, the point Jim was making about strong management  
4 and a board and all is real good. And, Robert, you and  
5 Dr. Urdy know this real well. If you have an elected  
6 board like an elected council, you end up with a  
7 situation where most of the time for most of the members  
8 there's tremendous risk aversion. They cannot stand  
9 embarrassment. So the first little embarrassment, they  
10 turn to Jesus. They say something, "I don't want to  
11 have that happen again."

12 He looks at me. He says,  
13 "I don't want that to happen again. I know you know  
14 that, but to make sure, I'm going to also have somebody  
15 check on you so it can't possibly happen again." And  
16 pretty soon you've got tremendous bureaucracy.

17 PANELIST ERWIN: No one  
18 makes a decision.

19 MR. MOORE: Yeah. It gets  
20 very difficult to do. So I think elections hurt. Now,  
21 I don't think they're the only answer. Beyond not --  
22 you know, having some freedom to make a mistake  
23 occasionally and have some incentive to take some risks,  
24 you may also need to build in a certain amount of  
25 authority. I mean, if the Council didn't have to prove

1 every item we did under 37,000., they wouldn't be  
2 subject to quite so many embarrassments. It could be  
3 the management that they could hold accountable. But,  
4 frankly, I've got a fairly good deal. I can hardly be  
5 held accountable for anything right now.

6 PANELIST BARNSTONE: And  
7 that's one of the things that we haven't said, but  
8 that's one of the things that's wrong with the system  
9 that we have.

10 MR. GRAHAM: You might see  
11 if you can find out by tomorrow what authority the ACC  
12 board has retained and what it has delegated.

13 MR. MOORE: Austin  
14 Community College?

15 MR. GRAHAM: Austin  
16 Community College, yeah, because I think they have  
17 delegated a great deal of authority and have two or  
18 three basic -- all they've retained is two or three  
19 basic policy decisions, and I was rather surprised when  
20 I found that out.

21 How do we select this  
22 group, then? Election, we have one person that likes  
23 that idea. We have others that think it's not such a  
24 great idea. How long do they serve -- if not an  
25 election, how do you get them there?



1 PANELIST BARNSTONE: Can we  
2 divide the question?

3 MR. GRAHAM: Yes, sir.

4 PANELIST BARNSTONE: First  
5 of all, critical in this is the question of the initial  
6 board because the first guys out of the shoe are going  
7 to set the path, and then there's a question of  
8 succession thereafter. So I think it's really different  
9 as how we get to the first board and then how then does  
10 succession happen. I think -- I mean, I hate to just  
11 throw it to the City Council myself. I do think that  
12 some group like this with the very fine people serving  
13 on the Electric Utility Commission ought to nominate  
14 some people. I think we ought to do a very --

15 PANELIST ERWIN: Nominate  
16 them to the City Council.

17 PANELIST BARNSTONE: Yeah,  
18 nominate them to the City Council. Let's begin this  
19 nomination process. I don't think we can have too high  
20 a hurdle because one of the benefits of all of this, as  
21 I said, is getting the most competent people running it.  
22 And so I'm for a more formal search, a search committee.  
23 How does everybody feel about that one?

24 MR. GRAHAM: We're getting  
25 to the hard stuff. This is the hard stuff.

1 PANELIST SMITH: Yeah. And  
2 I think the other set of questions we're going to have  
3 to deal with -- you had it up here earlier -- is whether  
4 we create a list of qualifications for various members  
5 or whether they're all at large and we somehow assume.

6 MR. GRAHAM: And one other  
7 thing. I don't want to pick on Smitty, but the purpose  
8 of this group of people is not to reach a consensus.  
9 The purpose is to fully air the various issues, as I  
10 understood it. So is this what you were talking --  
11 this --

12 PANELIST SMITH: Yeah.

13 MR. GRAHAM: Yeah. The  
14 other is, how long do they serve? Do they have special  
15 knowledge? Constituents we talked about elsewhere. We  
16 also talked about a geographic area as a basis of  
17 representation. Yes, sir?

18 PANELIST ERWIN: And I had  
19 a point since I brought up the geographic area of  
20 representation. If fiduciary responsibility is truly  
21 the test, then I don't care about geographical  
22 representation. I mean, if that's really going to be  
23 what they're responsive to, then being outside the city  
24 really doesn't make any difference to me.

25 PANELIST SMITH: Oh, I

1 agree, Al. And I don't mean to be agreeable, and I  
2 often find myself in a position where I do that.  
3 What -- you and I are probably the only people who live  
4 outside the City of Austin on this board. And I've now  
5 been watching this electric utility get torn up by  
6 people who live outside the city for the 16 years I've  
7 lived there, people who complain that no one ever pays  
8 any attention to their needs and that it is not  
9 representative to them. And I think it would be  
10 shooting ourselves in both feet and probably in one  
11 hand --

12 PANELIST ERWIN: Not to  
13 make it a slot.

14 PANELIST SMITH: Right.  
15 And if you think Sam and Bob have come loose already,  
16 just wait until the Westlake picayune crew start really  
17 tearing into this thing and get folks stirred up.

18 PANELIST BARNSTONE: It  
19 certainly is a fair question. I wonder just for the  
20 purposes of our -- that we set the formulation issues  
21 aside for a moment and get to those --

22 MR. GRAHAM: I'm listening.

23 PANELIST BARNSTONE: --  
24 later, because once you raise geography, then you raise  
25 rate classes and all of that business. And so --

1 MR. GRAHAM: Let's go back  
2 into dividing this into two sections. The Board No. 1,  
3 as I've called it, first board, the trailblazers, the  
4 most important board perhaps for the overall success of  
5 the entire scheme and then the successors. And Robert  
6 has put out a search committee, and I suppose out of the  
7 search committee you'd have nominees, maybe 50, maybe  
8 100. I don't know.

9 PANELIST MARSTON: If I or  
10 my friends get to be on the search committee, I'm always  
11 for those. When I'm not on them or my friends are not  
12 on them, I'm not for them. And I think that's probably  
13 true of everybody here.

14 PANELIST BARNSTONE: That's  
15 not true.

16 PANELIST SMITH: It's  
17 Marston's Axiom No. 1, if I get to choose, I like that.

18 PANELIST BARNSTONE: I  
19 mean, we have made a lot of progress here. I mean, we  
20 were saying that we're going to find the most qualified  
21 people we can find, we're going to -- we've established  
22 their duty, much of their scope of responsibility.  
23 What's wrong with --

24 PANELIST MARSTON: Well, I  
25 guess the problem is, what's the most qualified is in

1 the eye of the beholder. I mean, I would suspect El  
2 Paso Electric thought they had hotshot business people,  
3 all highly qualified, and they did the impossible,  
4 bankrupt a monopoly. I just think we need -- I mean, on  
5 the other hand, LCRA has a bunch of folks that are --  
6 have wide range experience. I mean, they're rice  
7 farmers, they're people who represent marinas, people  
8 who are -- at one point, they had somebody who was from  
9 a labor union from Austin.

10 PANELIST BARNSTONE: Well,  
11 let's back up. If you don't like the search committee,  
12 what do you want?

13 PANELIST MARSTON: I just  
14 think you've got to trust the City Council to -- I would  
15 have some spots and I would have a -- the -- and I think  
16 it's great to have us informally give names.

17 PANELIST BARNSTONE: But  
18 you're saying throw it to the City Council?

19 PANELIST MARSTON: Give it  
20 to the City Council.

21 PANELIST BARNSTONE: Well,  
22 they have the say; they have the power.

23 PANELIST MARSTON:  
24 Informally give names, I think that's a great idea. But  
25 to have some requirement or some belief that we -- I'm

1       sorry. Go ahead.

2                               PANELIST RILEY: You two  
3       are closer than you think.

4                               PANELIST MARSTON: That's  
5       probably right.

6                               MR. GRAHAM: You are.

7                               PANELIST RILEY: The City  
8       Council, you are both saying, would have the ultimate  
9       say. Robert is merely recommending that we give them  
10      some good ideas to --

11                              PANELIST RILEY: I'm not  
12      opposed to getting good ideas. What I would not have is  
13      a prerequisite that you had to be nominated by some  
14      search committee before you could be elected -- or  
15      appointed by the Council.

16                              PANELIST SMITH: And let  
17      pick up on that, that I think that one of the major  
18      problems I've always had with the City of San Antonio's  
19      electric utility -- or public service board and others  
20      was the homogeneity of those boards, and I don't think  
21      we'd get away with that with our City Council making  
22      those appointments. But I think what would be helpful  
23      if (inaudible) we go through a process of nominations  
24      but the city councilmembers also solicit and place names  
25      of nominations and some group of those people, then, are

1 selected and that you have some sort of minimal number,  
2 be it 25, of qualified nominees before the City Council  
3 can begin that process of selecting so that you aren't  
4 in a process where you're make picking just among a few  
5 potentials and you have several different sources of  
6 input to the City Council and not just have a  
7 self-perpetuating board like San Antonio has done.

8 PANELIST MARSTON: Robert,  
9 do you like that? I think Len may be right. I was  
10 overstating our differences and overstating what --

11 PANELIST BARNSTONE:  
12 Probably so.

13 MR. GRAHAM: Well, if the  
14 board is not elected, isn't the initial board going to  
15 be created by the City Council?

16 PANELIST URDY: Sure.

17 PANELIST BARNSTONE: Right.

18 MR. GRAHAM: So it's a  
19 matter of how do you get those names and then the EUC,  
20 one member for Council. One suggestion we've had is  
21 that in order to be on this board that you must be  
22 elected by the majority.

23 PANELIST BARNSTONE: Sam,  
24 let me tell you something.

25 MR. GRAHAM: Micromanaging?

1 PANELIST BARNSTONE: No,  
2 no. You're doing an outstanding job. This whole thing  
3 falls on its face if you don't have a good board, you  
4 know. If you don't have -- I want to give the Council  
5 every bit of help and -- but -- I think they need it.

6 PANELIST WATSON: Well,  
7 they ought to be asking for it.

8 PANELIST BARNSTONE: They  
9 have asked.

10 PANELIST WATSON: That's  
11 what I'm saying. I'm agreeing with you. What I'm  
12 saying is, I think you can give them a lot of help as  
13 long as they -- they ought to ask for that kind of help.  
14 They -- but the key is, if you submit four names, they  
15 shouldn't be required to just say --

16 PANELIST BARNSTONE: On  
17 that point, I think, Smitty made, if Smitty and I want  
18 to do a minority report and say we think we ought to  
19 nominate Smitty, you know, that's it. Of course, no,  
20 no, no. There's no sense to limit. But, you know, this  
21 is a difficult job. You know, we're going to ask people  
22 to give up their time, to be responsible.

23 I mean, you're talking  
24 about a lot of responsibility, because when you're  
25 talking about making an investment decision of a billion



1 dollars, say, to build a nuclear plant or something like  
2 that or a little old 400 million dollar generating gas  
3 turbine, that's a lot of responsibility. So when I say  
4 a search committee, I don't mean just a search  
5 committee. I mean a recruitment committee. I want -- I  
6 think that there's people out there who may be reluctant  
7 to serve, that we may want them to serve. I don't want  
8 just the eager beavers who think that -- you know, they  
9 want something on their resumes. I want people of  
10 substance, and part of the research effort is  
11 recruitment.

12 MR. GRAHAM: So if there  
13 were a search committee --

14 PANELIST BARNSTONE: By the  
15 way, let me throw out something controversial.

16 MR. GRAHAM: We hadn't been  
17 doing that earlier.

18 PANELIST WATSON: It's  
19 about time.

20 PANELIST BARNSTONE: I  
21 probably should hold my peace on this, but I'm just  
22 going to throw it out because I raised the issue of  
23 responsibility. I think that there ought to be  
24 reasonable compensation to those board members.

25 PANELIST URDY: Oh, I agree

1 with that.

2 PANELIST SMITH: Yeah. I  
3 don't think any -- I certainly would not disagree with  
4 that.

5 PANELIST URDY: You know, I  
6 think on the first question, though, if the Council is  
7 going to appoint the initial board, I think we ought to  
8 leave it at that because you can say what you want. If  
9 the Council is going to appoint them, they're going to  
10 do it the way they want to. I mean, if it's going to be  
11 one for each council -- there's nothing we can do about  
12 that. You know, I mean, we can say what we want, but, I  
13 mean, Council --

14 PANELIST BARNSTONE:  
15 Dr. Urdy, you've got a lot of experience. You've got 12  
16 years of experience. You can look at people; you can  
17 evaluate a candidate. And I think there's something  
18 interesting that happens when the community comes  
19 together as we have tonight, and it's quite a powerful  
20 voice. And I think that the Council would listen, and  
21 if, in their wisdom, they said we don't like what you've  
22 done, they can do that.

23 PANELIST URDY: Well, I  
24 don't have a problem at all with this -- you know,  
25 anybody recommending, you know, whomever they would to

1 the Council to serve, but, you know, on the  
2 technicalities of whether they do it one per person or  
3 whether they have a consensus -- ultimately they always  
4 have a consensus on all of them, even when they say  
5 they're doing it one per person. The Council has to  
6 pass on it. I mean, they do this on other boards where  
7 they aren't prescribed one, you know. They come to that  
8 agreement, and then everybody --

9 PANELIST BARNSTONE: A  
10 terrible result.

11 PANELIST URDY: So there's  
12 nothing to -- you know, this is sort of, I think,  
13 wasting time to try to tell them how they must vote on  
14 this.

15 MR. GRAHAM: Sure.

16 PANELIST URDY: If the  
17 Council is going to appoint them, the Council appoints  
18 the initial board. That's it.

19 MR. GRAHAM: So the idea is  
20 to have a blue ribbon type search committee to persuade  
21 people to take on this onerous duty, but whoever is  
22 selected might not be limited -- wouldn't be limited to  
23 just that list, and perhaps four votes would be  
24 necessary to be placed on the board.

25 PANELIST SMITH: I think it

1 would -- but I would suggest that what we do here is say  
2 that the search committee be responsible for coming up  
3 with some number of nominees far in excess, twice, four  
4 times, whatever, the number of seats are. And part of  
5 the point that I think Robert is making and where I  
6 would agree with him is in my experience of city council  
7 appointments, is that frequently the people who are  
8 appointed are political insiders, people who one way or  
9 another know a city councilman or a city councilwoman  
10 who are contributors, are people who are active in the  
11 neighborhood associations or who've got the loudest  
12 voice and keep getting appointed to these various  
13 committees because they're always out here complaining  
14 about the electric utilities and you want to shut them  
15 up by making them responsible.

16 What I'm suggesting here is  
17 that, as Robert has pointed out, there are people in the  
18 community who really know a great deal who don't surface  
19 in those circles, and maybe a search committee on a  
20 periodic basis when it's time for reappointment can get  
21 those people who are upper level management in a  
22 corporation or who are board members for another  
23 organization who really know a great deal about it, or  
24 folks at U.T. who don't surface in our day-to-day  
25 deliberations down here at Council because they're busy

1 teaching kids.

2 PANELIST URDY: When you  
3 say "search committee," you're talking about just a  
4 group of citizens who make recommendations? You're not  
5 talking about a formal search committee or --

6 PANELIST SMITH: Right.  
7 I'm talking about maybe this group or a group like  
8 this -- I don't necessarily want to serve on it -- or  
9 the EUD and, as a successor organization, perhaps a  
10 subcommittee of whatever board we create.

11 PANELIST ERWIN: Back to  
12 what Dr. Urdy said, am I wrong? I kind of perceived  
13 that the City Council sees themselves at this point as  
14 sort of an impediment to the management of the Utility.  
15 I think they're sort of --

16 PANELIST BARNSTONE: So  
17 what are you saying, Al? What are you saying, though?

18 PANELIST ERWIN: The worry  
19 about whether they're going to recreate the wheel and  
20 not appoint a responsible board might not be as strong  
21 as it was two years ago.

22 PANELIST BARNSTONE:  
23 There's no suggestion -- you know, we're not saying  
24 without us you're not going to appoint a responsible  
25 board. We're just saying let's -- the whole structure

1 here is to get the best and the brightest, the people  
2 that can best guide this through a competitive  
3 environment that we see on the horizon just for the sake  
4 of good management. So how do you do that?

5                               Once again, every major  
6 corporation has a search committee for its board  
7 members. I mean, we're not -- I'm not suggesting  
8 anything that isn't done every day in every board. They  
9 also compensate their board members. I think that as  
10 many lessons as we can take from private industry  
11 because, again, this is an enterprise. We ought to do  
12 so. And for a long time -- I mean, you know, we've been  
13 talking all around this, but that's where we're going.  
14 We're saying how can we replicate this so that it works  
15 for its shareholders, the citizens of Austin, in the  
16 best way possible.

17                           MR. GRAHAM: I flipped back  
18 to the very first page. I want to go through these  
19 rather quickly because it's 8:00 o'clock, and we have  
20 five people that I know of who want to ask a question or  
21 make -- so are there any issues -- as we go through  
22 these pages, are there any issues that you want to  
23 discuss any further before --

24                           PANELIST BARNSTONE: The  
25 only other thing that I can think of that we want to

1 take on right now is whether or not there will be a  
2 tenure, what kind of tenure are we talking about for  
3 the -- well, actually --

4 MR. GRAHAM: Well, terms,  
5 uh-huh.

6 PANELIST BARNSTONE: Terms.  
7 Do they serve at will?

8 PANELIST ERWIN: I think  
9 the San Antonio example is a fairly good one where  
10 they're staggered like LCRA's board.

11 PANELIST BARNSTONE: Okay.  
12 So staggered terms but at will?

13 PANELIST URDY: But at will  
14 to whom?

15 PANELIST BARNSTONE: At  
16 will to the Council. See, that's a powerful club --

17 PANELIST SMITH: Well, I  
18 think there's an easier --

19 PANELIST BARNSTONE: --  
20 because everyone has a few misgivings, what if they do  
21 this, what if they do that, what if they do that. And  
22 the answer to all of those is --

23 MR. GRAHAM: Yeah. I was  
24 going to say I also --

25 PANELIST MARSTON: I'm not

1 sure how I feel about that, but I think that's a very  
2 important point.

3 MR. GRAHAM: I would like  
4 us to spend about five minutes before we leave setting  
5 our agenda for tomorrow.

6 PANELIST SMITH: And let's  
7 see if there's something else that we can clean up. It  
8 seems to me there's a general consensus around  
9 staggered. Is there also a general consensus around  
10 term limits?

11 PANELIST BARNSTONE: Term  
12 limits..

13 PANELIST SMITH: Like two  
14 terms?

15 MR. GRAHAM: Depending on  
16 the length of time.

17 PANELIST BARNSTONE: I  
18 don't think so.

19 PANELIST MARSTON: Let's  
20 have it on the agenda for tomorrow.

21 MR. GRAHAM: Yeah. And  
22 that's a threshold. It would depend on your length of  
23 term, also.

24 PANELIST URDY: I'm not an  
25 advocate for term limits.



1 PANELIST BARNSTONE: No. I  
2 think they get a gold watch if they stay 20 years.

3 PANELIST ZUNIGA: You  
4 wouldn't want to lose a Shudde Fath.

5 MR. GRAHAM: Well, thank  
6 you for allowing me to -- as you can tell, I did well in  
7 penmanship. Is there anyone else that signed up? Is  
8 Dorothy Jackson still here?

9 MS. JACKSON: Yes.

10 MR. GRAHAM: Yes, ma'am, if  
11 you wouldn't mind coming down to the microphone.

12 MS. JACKSON: Not at all.  
13 Thank you, gentlemen, for letting me talk to you this  
14 evening. I do not like blackouts. I do not like high  
15 rates to pay for utilities. So how fair is an appointed  
16 board to the taxpayers? That's the question I have to  
17 ask you. You're all talking about fairness and  
18 appointed boards. How fair is an appointed board? If  
19 I'm in power and I like you better than I like him, I'm  
20 going to appoint you. So how fair is it? If it's an  
21 elected, it's elected by the whole body. It should be  
22 elected by everybody if it's an elected.

23 How can we save money? Why  
24 not sell the nuke? Can't you sell part of it without  
25 selling all of it? Why not get rid of the nuke? I'll

1 sell it for you if you want me to. I'll be glad to.  
2 And some people are paying more in the summer for  
3 utilities than they're paying for mortgages. I'm  
4 interested in not only today but in the future for my  
5 children and my grandchildren to be in Austin. How is  
6 our Electric Utility stacking up? Does it need a lot of  
7 repair? Can we carry it for 20 years or more or 50  
8 years?

9 We need a lot of questions  
10 answered before we decide on just one or two people.  
11 But I want somebody -- if my lights go out, I want to  
12 talk to them now, not tomorrow, not next year. Thank  
13 you. I appreciate your time.

14 PANELIST SMITH: And let me  
15 answer a couple of your questions. One is, I think,  
16 clearly your liability is a primary concern of everyone  
17 here and the Utility itself. We have made a serious  
18 attempt at the City of Austin to try and sell our  
19 nuclear power plant, and the most recent case to come  
20 down about two weeks ago, the raging Cajun co-op, out of  
21 Louisiana had to pay somebody to take the nuke off of  
22 their hands.

23 And as the chairman of  
24 their public utilities commission said in Louisiana,  
25 nuclear power plants like River Bend in that case -- and

1 I think River Bend actually performed slightly more in  
2 South Texas -- are kind of like a car, and he says  
3 that's such a bad car that if you took it down to the  
4 French Quarter with the keys in it and the window open  
5 and put a sign saying "Keys in the ignition," it would  
6 still be there tomorrow morning. And that's what we're  
7 faced with our nuclear power plant. Nobody wants it.  
8 Somebody offered them a dollar here at the City of  
9 Austin and they laughed and realized that maybe that was  
10 the best deal they had on the table.

11 PANELIST ZUNIGA: So if you  
12 can sell it, you've got a commission coming.

13 MS. JACKSON: Well, 40  
14 percent of our bills, I understand, goes to that.

15 PANELIST SMITH: Yeah,  
16 that's true. If we could give it away and still just  
17 pay off the debt, we'd probably save somewhere between  
18 20 and 30 million dollars a year, which is enough to  
19 make the difference between our current utility transfer  
20 and what we think we need to be to be competitive. So  
21 that's the kind of stakes we have, and if we could just  
22 convince our partners to shut it down and walk away from  
23 it, we'd all be making more money than we are today.

24 MR. GRAHAM: Thank you.

25 PANELIST SMITH: They're

1 not dumb enough to buy it.

2 MS. JACKSON: Thank you.

3 MR. GRAHAM: Robert Donley.

4 MR. DONLEY: Good evening.

5 My name is Robert Donley. Well, one of the questions  
6 that I have is the very fact that this committee -- this  
7 board is -- we are speaking about democracy and having a  
8 board or a committee that is representative of the  
9 people. Here you have a -- every business and special  
10 interest in the color wheel, but you don't have any  
11 citizens on this committee that represent the common  
12 ratepayer. And another thing is that you're starting  
13 off wrong because from the very beginning you don't --  
14 this is -- looks like a good old boy thing here.  
15 There's nothing but men, and I think this is not showing  
16 the best intentions to the City of Austin. I think that  
17 it's flawed from the very beginning. And how do you  
18 propose to have this inclusion that you speak about?  
19 All you see here is male.

20 MR. GRAHAM: Thank you.

21 PANELIST SMITH: I think  
22 that's a concern that many of us share, and if you look  
23 around you, Mr. Donley, at the Electric Utility  
24 Commission, you'll find that it's well-represented and  
25 some would say dominated by the women on the board.

1 COMMISSIONER FATH: We  
2 wish.

3 COMMISSIONER JONES: Sam,  
4 why don't you let Teresa respond to that in terms of the  
5 list of invitees and their work --

6 MR. GRAHAM: Sure.

7 COMMISSIONER REEL: Yes.

8 There were a number of people that were invited,  
9 including Christi who -- females, different areas of the  
10 neighborhood, and there were people with conflicts  
11 tonight. We gave people short notice, and we will have  
12 a different panel for the discussion on transfer; and  
13 with a little more advance notice, we're hoping to be a  
14 little more diversified.

15 MR. GRAHAM: Mr. Hunter?  
16 Oh, go ahead.

17 PANELIST URDY: I just  
18 wanted to mention the issue that he raised about  
19 representing the common ratepayer. I think that's where  
20 Smitty comes from and, I mean, I consider myself to be a  
21 fairly common ratepayer myself with the same problems  
22 all the other ratepayers have. So, you know -- and I  
23 share the concern. And I'm glad to know why there were  
24 no women, but other than that, you know, the EUC asked  
25 us to serve.

1 PANELIST WATSON: And I'm  
2 <sup>KERRY</sup>~~Carrie~~ Tate was invited -- was the initial -- I'm not  
3 supposed to be here.

4 COMMISSIONER REEL: We had  
5 a woman, but Kirk showed up.

6 MR. GRAHAM: Yes, sir?

7 MR. KAHN: I'm Bob Hunter.  
8 The question I would ask, is it commonly appreciated  
9 that the residential ratepayers have a very close area  
10 of interest with the industrial ratepayers? If we  
11 through bad policy do not make our industrial rates  
12 satisfactory, then the individual residential ratepayer  
13 is going to pay the price.

14 MR. GRAHAM: Okay. So the  
15 relationship of different ratepayer groups is  
16 intertwined.

17 MR. HUNTER: Exactly.

18 MR. MOORE: I think that's  
19 well pointed out on Page 2 of one of the handouts here  
20 that --

21 PANELIST MARSTON: Let me  
22 say something about that handout because the consultant  
23 has said now several times that the risk is much, much  
24 less to the consumer than that handout implies and, if  
25 he had it to do over again, he would do that

1 differently. He tried to put in there a worse case  
2 scenario but on assumptions that are impossible to  
3 happen.

4 One is that the Utility  
5 does not grow at all. I saw in the paper today we're  
6 going to grow like crazy. So all those numbers are out  
7 the window to begin with. Secondly, that we don't pay  
8 down the debt at all, those numbers are already stale.  
9 We've already paid down the debt several -- a few  
10 million dollars in the -- or at least several hundred  
11 thousands of dollars. We do it every day. And, third,  
12 that we would do -- third, that all the industrial  
13 consumers and all the commercial consumers leave the  
14 utility and that's just not going to happen. It's  
15 physically impossible to happen. And the fourth thing,  
16 of course, is that the utilities not receive any payment  
17 for stranded investment, and the consultant admits that  
18 he should have highlighted that number.

19 So the risk is -- there is  
20 a real risk. I don't want to say that. The risk is  
21 just simply markedly less than that picture implies. I  
22 do think, though, the point is well-made there that we  
23 have a need to try to keep some part of the industrial  
24 base, and we've got to act accordingly.

25 PANELIST BARNSTONE:

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1 Fortunately we don't have to take on the rate issue or  
2 any -- I mean, we're not running for it. We're just  
3 talking about how to run it.

4 MR. GRAHAM: Is  
5 Mr. Fernandez still here?

6 MR. FERNANDEZ: Good  
7 evening. I just want to briefly echo the sentiments and  
8 the trust and the knowledge of John Moore and his team  
9 in the operations of the electric department. Given all  
10 the factors that he has to deal with in regards to  
11 running an operation within a government setting, that  
12 in itself is a challenge.

13 I also want to make a  
14 comment in regards to the people that are selected to  
15 serve on this independent -- and I think "independent"  
16 is a very, very important word in how it's  
17 interpreted -- are folks that must know and understand  
18 the business because, if not, we're going back to the  
19 same old selection of individuals based on politics, and  
20 that has proven to be not very profitable and not very  
21 wise. And that's why we're in a position now that  
22 because competition is coming that we need to look and  
23 turn the other leaf and base it based on quality, based  
24 on product output, and based on the fact that we also  
25 need to contend with the government element of this



1 organization. We cannot have the cake and eat it, too.  
2 It's a government entity. We have some privileges on  
3 the tax issues, tax-exempt bonds. If this was a private  
4 organization, that wouldn't there be.

5 So there's a lot of folks  
6 out there that because of economic reasons are efficient  
7 users of electricity. Many people in my community have  
8 no other choice but to be efficient. And it is those  
9 type of individuals that can bring some wisdom to  
10 operate and knowledge to the operations of an entity of  
11 this magnitude.

12 But I think that the future  
13 for the electric department is one of business, and,  
14 therefore, it is very, very important -- and I agree  
15 with you, Robert -- that qualifications -- you need to  
16 speak to some type of criteria, some type of  
17 qualifications that will bring the best judgment for the  
18 interests -- for the best interests of the taxpayers  
19 because, if not, we'll be facing -- we'll be placed in a  
20 situation where we'll be having to go back to the  
21 drawing board. And I think we should bring in all the  
22 resources and visit all the existing boards that are out  
23 there right now as opposed to try to reinvent the wheel.  
24 And as you mentioned, there's some good elements in the  
25 San Antonio plant, and there's some that you would not

1 even want to dare duplicate here in Austin because  
2 Austin is Austin and it's not Portland or any other  
3 city.

4 But with that, I want to  
5 strongly emphasize the new arena that this department is  
6 entering into is no longer going to be the boss in this  
7 environment. It's going to -- the deregulation is  
8 coming in and we just need to be competitive and be able  
9 to sell that product, and if we're not wise users of our  
10 monies, you know, we're -- we may face -- we may be  
11 facing a situation where we are going to have to sell or  
12 else we're not going to have a choice.

13 But thank you. And my last  
14 comment is, I wish we could separate the electric bill  
15 because my electric bill is -- the water rate is higher  
16 and the garbage and I don't know what kind of -- and my  
17 electricity bills, it's not that big, but it sends a  
18 very, very strong and negative message when you have all  
19 of those combined together. Thank you very much.

20 MR. GRAHAM: Thank you.

21 PANELIST BARNSTONE:

22 Gavino, those were very, very wise comments. Thank you  
23 very much.

24 MR. GRAHAM: Mr. Byron? Is  
25 Mr. Byron still here? Bruce Byron, he's not here.

1 Well, let's talk about what we're going to do tomorrow  
2 night. Thank you for the comments. Those were  
3 excellent.

4 What are we going to do  
5 tomorrow night, Gentlemen? I can say gentlemen. Is  
6 everybody going to be back? Yes, sir?

7 PANELIST ERWIN: I have had  
8 a death in my family. I am going to be in Corpus for a  
9 funeral tomorrow.

10 MR. GRAHAM: Sure.

11 PANELIST BARNSTONE: Well,  
12 we can begin the discussion with the question about  
13 whether we -- we're going to explore the possibility of  
14 recommending that the Council do this without a charter  
15 election. That requires legal analysis. I don't know  
16 that it can be done by tomorrow. If it could, of  
17 course, that's just one more thing that we could  
18 recommend. I mean, you know, the way that some of these  
19 things get started is a consultant, not an attorney puts  
20 it in the -- somebody just answers the question briefly  
21 and boom the whole city is going off in this direction,  
22 and if we can avoid an incredibly costly and complex  
23 process, I think that we ought to try it.

24 MR. GRAHAM: Yes, sir?

25 PANELIST ERWIN: Wouldn't

1 it be logic for us to come up with what they think is  
2 the best forum and then submit that to the attorney and  
3 say, is this -- what has to happen before this can  
4 happen.

5 PANELIST BARNSTONE: Well,  
6 that's certainly one way to proceed. The other way that  
7 be simple to say is, how far can we go this area in  
8 contracting? In other words, how far can the Council  
9 go --

10 MR. GRAHAM: Let me ask  
11 the -- Dr. Jones. After the public persons invited have  
12 their four discussions, what does the EUC plan to do  
13 with the information? We're here at your invitation.

14 COMMISSIONER JONES: It's  
15 my understanding -- and Teresa may want to clarify  
16 this -- that we were going to go through that  
17 information, and from whatever has been transpired in  
18 those documents, we would then prepare a report and  
19 recommendation to the City Council from the Electric  
20 Utility Commission. So --

21 MR. GRAHAM: So we can  
22 build a consensus tomorrow, if possible, and the people  
23 that are on -- that are up here, I know -- what little I  
24 know about you, I can't imagine that if the EUC forgets  
25 what the consensus is that somehow it will not get to

1 the City Council anyway.

2 PANELIST BARNSTONE: I  
3 think that it's important -- if the community is  
4 speaking --

5 MR. GRAHAM: I do, too.

6 PANELIST BARNSTONE: You  
7 know, this is important.

8 MR. GRAHAM: Yeah. But  
9 that's the framework in which we're operating. So  
10 tomorrow we can discuss -- and what are your assignments  
11 again, your homework?

12 MR. MOORE: Well, there's  
13 some information. I'm going to try to get as much as I  
14 can for Robert's question about can this be done by  
15 contracting with an entity versus a charter election,  
16 Senator Herring's questions about the history of San  
17 Antonio, what exactly is their charter, how did it  
18 change. We've got a lot of information on their  
19 covenant, and we'll try to run through a little bit of  
20 that with you-all.

21 MR. GRAHAM: Covenant under  
22 which it operates?

23 MR. MOORE: Yeah, the bond  
24 covenants that set it up, the city charter, the state  
25 legislation. Of course, the legislation is what we've

1       been talking about tonight.

2                               MR. GRAHAM:   Exactly.

3                               MR. MOORE:   And I may have  
4       a few other questions, something about ACC board --

5                               PANELIST BARNSTONE:  
6       Dr. Urdy or anyone -- but especially Dr. Urdy.  Do you  
7       see any virtue in a charter election if it can be  
8       avoided?  I mean, is that something that --

9                               PANELIST URDY:  No.  I  
10      don't -- you know, I think the intended goal is to  
11      create this independent board as efficiently as you can.  
12      If it requires a charter election, fine; if it doesn't,  
13      fine.

14                              PANELIST SMITH:  I agree.  
15      And let me go one step further, and certainly a number  
16      of people are aware of this who are potential  
17      competitors, is that charter elections by their nature  
18      can be particularly risky.  And the risk that I see is  
19      that the -- there is no prohibition against a competitor  
20      funding a significant race to defeat a charter amendment  
21      to keep us in a noncompetitive position.  Special  
22      purpose committees can fund campaigns against a ballot  
23      initiative or a charter amendment, and I would suggest  
24      that we may want to take that back to the City  
25      Council --

1 PANELIST WATSON: And  
2 deduct it from their income taxes.

3 PANELIST SMITH: And deduct  
4 it from their income taxes. And this is something I  
5 would suggest we take to the City Council for an  
6 amendment to our ordinances here to prohibit that from  
7 happening before we take that risk. Marston is shaking  
8 his head. He probably is going to tell me it can't be  
9 done.

10 PANELIST MARSTON: The  
11 Supreme Court case that says -- even worse than the  
12 corporations that have their --

13 PANELIST BARNSTONE:  
14 Commercial speech.

15 PANELIST MARSTON: Under a  
16 Supreme Court decision, you cannot prohibit corporations  
17 even from funding votes on referendum on issues. So  
18 even though good policy, bad Supreme Court decision  
19 that --

20 PANELIST BARNSTONE: So  
21 there's unanimity on that point, which I think is a --  
22 that's a big one.

23 MR. GRAHAM: So tomorrow we  
24 will receive back the information. We'll also -- yes.

25 PANELIST MARSTON: I don't

1 want to -- I think I agree, though. The only reason why  
2 I would think we might want to have an election is that  
3 you then have buy-in or the electorate for this. If  
4 it's seen as a fundamental change -- and I'm not sure it  
5 is, but if it is and the Council does it on their own  
6 without sign-off of the electorate, then the question  
7 is, does it become an election issue --

8 PANELIST BARNSTONE:

9 They're not giving it away.

10 PANELIST MARSTON: The

11 other thing is the possibility, of course, is that if  
12 you can do it without a city charter election you can  
13 undo it without a city charter election, and I guess I  
14 haven't thought about this enough.

15 PANELIST BARNSTONE: There

16 may come one.

17 PANELIST MARSTON: And I

18 think I agree with you. I guess at this point did not  
19 want to at 8:27 say I'm certain I agree with that point.

20 MR. GRAHAM: While you're

21 thinking about what we're going to do tomorrow, Len, you  
22 won't be here tomorrow night. If there's something you  
23 want to say tonight, be thinking about it and I'll come  
24 back to you in one minute, maybe two.

25 Okay. All right. So we're



1 going to discuss what John is going to be bringing back.  
2 We're going to discuss in greater detail the structure  
3 of the board, criteria, selection -- well, we --  
4 selection or how to get it to the Council. We can  
5 discuss -- you're going to think overnight, Jim. Maybe  
6 we'll talk more about election versus nonelection.  
7 There's a lot to be said for getting a community to buy  
8 into something. On the other hand, having well-funded  
9 opposition run by people who don't live here with  
10 limitless funds, I mean, that ain't good either  
11 obviously. Marilyn, yes.

12 COMMISSIONER JONES: Also,  
13 on tomorrow evening, the commission members that would  
14 like to make comments may also do so at that time.

15 MR. GRAHAM: In fact, we  
16 have communication from the public as Roman Numeral I.  
17 Was that intentional, Teresa?

18 COMMISSIONER REEL: Right,  
19 for anyone who's here. And then if they bring up  
20 issues, then the Panel can -- we can add that to the  
21 list for discussion.

22 MR. GRAHAM: Okay. And  
23 then question -- and so where did you plan for the  
24 commission members --

25 COMMISSIONER REEL:

1 Question and answer.

2 MR. GRAHAM: Question and  
3 answer at the end. All right. And, again, the same  
4 time frame, 5:30 to 8:30?

5 PANELIST SMITH: Would that  
6 make sense to have the Commission talk with us before we  
7 go through the rest of the day? I mean, they may know  
8 or have some opinions or have some thoughts that would  
9 be useful.

10 COMMISSIONER REEL: Okay.  
11 Then we'd move that up to right after the citizen  
12 communication.

13 PANELIST SMITH: I think  
14 that makes sense to me, yeah.

15 MR. GRAHAM: Yeah. You've  
16 got total flexibility here.

17 PANELIST BARNSTONE: And we  
18 have the questions of search committee on there, too.

19 MR. GRAHAM: Sure,  
20 absolutely.

21 PANELIST SMITH: And tenure  
22 and limits and the issue of whether we can kick them off  
23 once they're on there.

24 MR. GRAHAM: Yeah, are they  
25 really tenured.

1 PANELIST SMITH: Yeah.

2 MR. GRAHAM: And how do  
3 they get removed.

4 PANELIST SMITH: Right, and  
5 what is -- what are grounds for removal.

6 PANELIST BARNSTONE:  
7 Compensation.

8 PANELIST MARSTON: I think  
9 Robert divided it between the initial selection and  
10 subsequent selection, and we never --

11 MR. GRAHAM: No, we didn't.

12 PANELIST MARSTON: We never  
13 got to a subsequent appointment.

14 PANELIST BARNSTONE: And  
15 that deserves its own consideration.

16 PANELIST ZUNIGA: Would it  
17 be appropriate to talk about the manager's relationship  
18 to this board?

19 MR. GRAHAM: I think it  
20 would.

21 PANELIST URDY: The whole  
22 issue of -- in most cases, I think that's written in the  
23 law as part of the document, what are the charges to the  
24 board and how it will function or what do you call that,  
25 rules?

1 PANELIST BARNSTONE: Really  
2 along those lines, I mean, the real issue there is that  
3 we've talked -- you talked about the big three sign that  
4 you put up there, the big three powers. I mean, there  
5 is the question about whether we want to retain other  
6 powers than those three for the Council.

7 MR. GRAHAM: And these  
8 concerns: how fair will your board be, very basic but  
9 important items. We can discuss that as well, knowledge  
10 of board members, qualified. Okay. Yes, sir?

11 MR. MOORE: Assuming that  
12 near this time tomorrow night that there's some kind of  
13 a consensus, I think it might be useful for you and the  
14 EUC to talk a little bit about what happens next because  
15 I have seen the EUC send many well-thought-out  
16 recommendations to Council that just -- and that's all  
17 that happens next. I think the EUC would like to have  
18 your ideas on how you might make whatever it is you  
19 think ought to happen actually happen.

20 PANELIST BARNSTONE: And I  
21 understand that and I appreciate the fine, fine service.  
22 I think this is really an outstanding EUC that we have,  
23 and Dr. Urdy and I know exactly what John is talking  
24 about. You know, the recommendations come and that is  
25 the basic problem. It comes like with a flood of so

1 much that they don't focus. They'll give it, you know,  
2 half the thought that anybody else gave it. I think the  
3 way to do that, of course, is for there to be a verbal  
4 presentation to the Council, that the Council understand  
5 who was serving on the committee and that the  
6 recommendations be very clear, crisp. And in their  
7 outline, I think the Council would appreciate the  
8 thought that went into them if they are presented well.

9 MR. GRAHAM: Len, did you  
10 have a valedictory?

11 PANELIST RILEY: Actually I  
12 was thinking of it as being the Eric Sevareid for the --  
13 some of you aren't old enough to know that, I guess.  
14 About three hours ago, I think that probably none of us  
15 around the table knew more than half of the others, and  
16 I think some of us knew very few of the people around  
17 the table, and other than having some homework that was  
18 sent to us, I'm not sure that we exactly knew what the  
19 agenda would be. But it seems like in three hours we  
20 have converged on a consensus on an awful lot of points  
21 and we have a pretty crisp agenda for tomorrow night.  
22 So I'm very encouraged by the progress that's been made  
23 in three hours, and I think this group can make a lot of  
24 continuing progress to the benefit of both the  
25 ratepayers and the taxpayers and the employees of our

1 electric utility here. And I will be briefing Ed and  
2 I'm sure he will share these thoughts that we've  
3 converged on tonight, and we'll look forward to working  
4 with you tomorrow night.

5 MR. GRAHAM: Thank you.

6 Smitty, you had something?

7 PANELIST SMITH: Yeah. One  
8 of the thoughts that had occurred to me in looking over  
9 these materials is that there was some wisdom in that  
10 many of the other utility systems had either a  
11 councilmember or the mayor actually sit on the board  
12 either as an ex officio member or just as an observer.  
13 And that may be a way to make some of the linkages that  
14 are not currently being made between the Council and its  
15 deliberations.

16 MR. GRAHAM: Okay.

17 PANELIST BARNSTONE: Good  
18 suggestion, very good.

19 MR. GRAHAM: We'll -- let's  
20 discuss that, too.

21 PANELIST BARNSTONE: And  
22 just -- Marilyn, you know, on this question of how to  
23 get the Council's attention -- and there's many, many  
24 fine, fine people in this room. You know, we have  
25 Dr. Urdy here; we have Senator Herring. Either one of

1       them would get the Council's attention if they made the  
2       presentation, I can assure you.

3                       PANELIST URDY: Well, I  
4       don't know. That might be true. But I do think that,  
5       you know, this is the case -- the problem that we're  
6       talking about. Council -- now the council race is going  
7       on. The budget is -- you know, they've got big problems  
8       with the budget, and this could very easily slip right  
9       into next year before we know it. So I think we do have  
10      to think very seriously about how we keep the -- and  
11      continue to inform the citizens because a lot of this is  
12      going on. The citizens are not really aware, and I  
13      think this effort is very, very important to start  
14      bringing the citizens into this and really begin to  
15      understand what actually is going on.; And I think we  
16      have to continue that at any rate. But, you know, it  
17      could be a -- it might work just fine, but it could very  
18      well be a challenge to try to keep this moving along  
19      with the Council.

20                      PANELIST BARNSTONE: I  
21      think that there's some momentum. I sense it. But like  
22      John says, it can certainly fall, and I think it's  
23      certainly incumbent to keep the ball bouncing.

24                      MR. GRAHAM: Well, thank  
25      you very much. I look forward to tomorrow evening, and

1 we will follow our agenda. But thank you again.

2 (At this time, the  
3 proceedings were adjourned at approximately 8:35 o'clock  
4 p.m., Monday, May 13, 1996.)  
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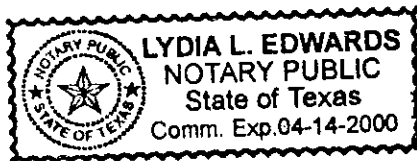
1 STATE OF TEXAS )

2 COUNTY OF TRAVIS )

3 I, LYDIA L. EDWARDS, certified shorthand  
4 reporter and Notary Public for Travis County, Texas, do  
5 hereby certify that the above-captioned matter came on  
6 for hearing before the AUSTIN ELECTRIC UTILITY  
7 COMMISSION as hereinafter set out.

8 I FURTHER CERTIFY that the proceedings of said  
9 hearing were reported by me from videotape, reduced to  
10 typewriting under my supervision and control, and, after  
11 being so reduced, were filed with the AUSTIN ELECTRIC  
12 UTILITY COMMISSION.

13 GIVEN UNDER MY OFFICIAL hand of office at  
14 Austin, Texas, the 25th day of May, 1996.



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Lydia L. Edwards  
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**EUC Public Forum  
Monday, May 13, 1996  
Meeting Notes**

Page 1  
of 2

**Design Board:  
Independent**

**1) EUC**

**2) Responsiveness to whom?**

- A. Customers**
- B. Owners, Taxpayers**

**3) To whom is duty?**

**Fiduciary?**

**4) Total Autonomy But Big 3 & Power to Appoint**

**5) Constituencies**

**6) Board**

**General Manager strong (day to day)**

**7) Elected Board**

- A. Public discussion**
- B. Government by soundbite**
- C. Utility funding**

**8) Geographic Area**

**Representation Outside Austin**

pg 13-96

Page 2  
of 2

## 9) Composition

- A. How selected?
- B. How long?
- C. Special knowledge?
- D. Constituents?

## 10) Selection

### Board #1 Council Successors staggered

- 1. Search committee nominees (reasonable compensation)  
Not limited to list
- 2. 4 votes
- 3. City council

## 11) Criteria

### Search Committee group of citizens

## 12) Questions

- A. How fair will board be?
- B. Maintenance?
- C. Size bills?
- D. Common ratepayer interest?
- E. Relationship of ratepayers common interest?
- F. Well run utility now/knowledgeable/board members/qualified

**City of Austin Electric Utility Commission  
Public Forum  
Tuesday, May 14, 1996**

**Informational Materials**

- I. City of San Antonio Ordinance and Indenture (1942):  
Article VI - Management
- II. City of San Antonio Ordinance and Indenture (1951):  
Article VI - Management
- III. City of San Antonio New Series Bond Ordinance:  
Section 20 - Management of the System
- IV. City of San Antonio Official Statement (1995):  
History and Management  
Form of Government and Administration  
Certain Provisions of the Ordinance (Appendix D)  
Certain Provisions of the Indenture (Appendix E)
- V. Charter of the City of San Antonio (March, 1941)  
Selected excerpts
- VI. Charter of the City of San Antonio (September, 1948)  
Selected excerpts
- VII. Charter of the City of San Antonio (Amended May 4, 1991)  
Selected excerpts
- VIII. State Legislation on Formation of a Board - Article 1115

*San Antonio*

*Purchased from 100  
old bonds (costs to retire 1997)  
vs new bonds  
new bonds require  
nom. 7% e.e.*

*past 16 years  
has had  
reps. from  
various  
ethnic groups  
& women  
but from  
business  
community*

*Bob Kahn*

# ORDINANCE AND INDENTURE

Authorizing Issuance of

CITY OF SAN ANTONIO

ELECTRIC AND GAS REVENUE BONDS

IN THE SUM OF \$35,000,000

Ordinance Passed on July 25, 1942

As Amended on October 23, 1942

Including Indenture As Amended

THE CLEAR CO. - SAN ANTONIO

FIRST  
13 pages

1942

any time held in the Renewal and Replacement Fund and Contingencies Fund may, at the discretion of the Board of Trustees, be invested in securities which are either direct obligations of the United States of America or direct obligations of any state or municipality thereof which are eligible for the investment of trust funds under the laws of the State of New York then in force, or which are direct obligations of Bexar County, Texas, the City of San Antonio, Texas, or the Independent School District of the City of San Antonio, Texas.

## ARTICLE VI.

## MANAGEMENT

SECTION 1. Pursuant to authority contained in Article 1115, Texas Revised Civil Statutes of 1925, the complete management and control of the system during such time as any of the bonds herein authorized are outstanding and unpaid, shall be in the hands of a Board of Trustees to consist of five citizens of the United States of America permanently residing in Bexar County, Texas, to be known as the "Board of Trustees of the San Antonio Electric and Gas System." Said board is hereinafter and hereinafter in this indenture referred to as the "Board of Trustees." The Mayor of the City of San Antonio shall ex-officio be one member of the Board of Trustees and the remaining members of the Board of Trustees shall consist of D. F. Youngblood, to serve for a term ending December 31, 1944, W. B. Tuttle to serve for a term ending December 31, 1946, Franz C. Groos to serve for a term ending December 31, 1948, and Walter P. Napier to serve for a term ending December 31, 1950, each term of office to commence on the date of this indenture. After the expiration of each of the above prescribed terms of office, each member of the Board of Trustees, other than the Mayor, shall serve for a term of five years. All vacancies in membership, whether occasioned by expiration of office or otherwise, shall be filled by a majority vote of the members of the Board of Trustees. Permanent removal of any member of the Board from Bexar County shall vacate his membership. Members shall be eligible to be re-elected for one additional term, and one only. If there shall hereafter be enacted by the Legislature of Texas an act making legal a seven person membership for the Board of Trustees, two additional members shall be elected for regular five year terms by the Board of Trustees in the manner hereinabove provided for filling vacancies.

Subject to the provisions and restrictions contained in this indenture, all of which shall be binding upon the Board of Trustees, the Board of Trustees shall have complete authority

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and control of the management and operation of the system and the expenditure and application of the revenues of the system. A

The members of the Board of Trustees shall meet for the purpose of organization as soon as may be after the execution of this indenture and shall organize through the election of one of its members as Chairman and one as Vice-Chairman and through the appointment of a Secretary and a Treasurer or a Secretary-Treasurer, who may, but need not be, a member or members. If a member of the Board of Trustees is not appointed as Secretary or Treasurer, or Secretary-Treasurer, then the employee of the Board of Trustees whose duties in the operation of the system require him to perform similar duties may be appointed as such Secretary or such Treasurer or such Secretary-Treasurer. The Board of Trustees may make such regulations and by-laws for the orderly handling of its affairs as it may in its discretion see fit and shall thereafter operate and manage the system with the same freedom and in the same manner as are ordinarily enjoyed and followed by the Board of Directors of a private corporation operating properties of a similar nature. X

The Board of Trustees shall obtain and keep continually in force an employees' fidelity and indemnity bond of the so-called "blanket" type, written by a solvent and recognized indemnity company and covering losses to the amount of not less than One Hundred Thousand Dollars (\$100,000).

The Board of Trustees shall elect and appoint all officers and employees which it may consider desirable, including a general manager of the system and an attorney or attorneys. No officer or employee may be employed by the Board of Trustees who shall be related within the second degree of consanguinity to any member of the Board of Trustees, nor shall the Board of Trustees be permitted to fill a vacancy in its membership by any person so related to any member of the Board, or by any person who shall have been so related within a period of five years prior to his election. The members of the Board other than the Mayor of the city shall receive an annual compensation of Two Thousand Dollars (\$2,000), except that the Chairman of the Board shall receive an annual compensation of Two Thousand Five Hundred (\$2,500). With the consent of all remaining members of the Board, one member of the Board may be made general manager of the system, and in such event the member so acting as general manager may receive an annual compensation not in excess of Twelve Thousand Dollars (\$12,000). The members of the Board of Trustees, either singly or collectively, shall not be personally liable for any act or omission not wilfully fraudulent or mala fide. Any member of

the Board of Trustees other than the Mayor of the city who shall be continuously absent from all meetings of the Board for a period of four consecutive months shall, unless he shall have been granted leave of absence by the unanimous vote of the remaining members of the Board, be considered to have vacated his office. Any member of the Board other than the Mayor of the city may, by unanimous vote of the remaining members of the Board, be removed from office, but only for adequate cause.

## ARTICLE VII.

### POSSESSION OF MORTGAGED PROPERTY

SECTION 1. While not in default in the payment of principal or interest on any of the bonds secured hereby, or in respect of any of the covenants, agreements or conditions in this indenture contained, the city through the Board of Trustees shall be permitted and suffered to possess, use and enjoy the trust estate and all property and appurtenances, franchises and rights conveyed by this indenture (except money or property, if any, expressly required to be deposited with the Trustee) and to receive and use the revenues, rents, issues, income, produce and profits thereof with power in the ordinary course of business freely and without let or hindrance on the part of the Trustee or of the holders of the bonds, to use and consume supplies; to alter, repair, dismantle and change the position of any of its buildings and structures, plants, mains, pipe lines, poles, wires, conduits or other property whatsoever (provided that no such change shall impair the lien of this indenture upon any such building, structure, plant, main, pipe line, pole, wire, conduit, or other property); to replace and renew any of its equipment, machinery or other property; and to acquire any and all rights under choses in action and contracts. X

SECTION 2. The city from time to time, through the Board of Trustees, while in possession of the trust estate shall be suffered and permitted without any release from or action by the trustees or either of them to sell, exchange or otherwise dispose of, free from the lien of this indenture, (1) any of its equipment, machinery, fixtures, apparatus, appliances, tools, implements, or other chattels at any time subject to the lien hereof which may have become worn out or unserviceable, disused, undesirable or unnecessary for use in the conduct of its business, replacing the same by, or substituting for the same, other property of equal value to the city, which shall forthwith become, without further action, subject to the lien of this indenture, and (2) any materials, merchandise, equipment and supplies in the ordinary

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SECTION 8. At the close of each fiscal year all accounts and funds of the Systems shall be balanced and adjusted and such transfers, distribution and adjustments made as will cause all revenues and income for the year to be applied and held in accordance with the provisions of this Article V, and the Board of Trustees shall at the close of each operating year cause an audit of the Board's accounts and operations to be made by or under the supervision of independent certified public accountants selected by the Board of Trustees.

## ARTICLE VI

### MANAGEMENT

SECTION 1. Pursuant to the authority contained in Article 1115, Revised Civil Statutes of Texas, 1925, as amended, the complete management and control of the systems during such time as any bonds issued hereunder are outstanding and unpaid shall be vested in a Board of Trustees consisting of five citizens of the United States of America permanently residing in Bexar County, Texas, to be known as the "City Public Service Board, of San Antonio." Said Board is referred to in this Trust Indenture as the "Board" and the "Board of Trustees." The Mayor of the City of San Antonio shall ex officio be one of the members of the Board of Trustees, and the remaining members of the Board of Trustees shall consist of Walter P. Napier, to serve for a term ending January 31, 1953; Willard E. Simpson, to serve for a term ending January 31, 1955; James H. Calvert, to serve for a term ending January 31, 1957; and John M. Bennett, Jr., to serve for a term ending January 31, 1959; each term of office to commence with the date of this Trust Indenture. All vacancies in membership on the Board, whether occasioned by failure or refusal of any person above named to accept appointment or by expiration of term of office or otherwise, shall be filled by the majority vote of the remaining members of the Board of Trustees. No person who is related within the second degree of consanguinity or affinity to any member of the Board of Trustees or any person who shall have been a member of the Board of Trustees within a period of five years prior to the election shall be eligible for election as a member of the Board. The term of office of each member elected to the Board, after the initial terms of the members named above, shall be five years. A person who has served as a member of the Board either for an initial term as above specified or a single five-year term by virtue of election by the Board of Trustees, shall be eligible to be re-elected for one additional five-year term, and one only. A member who is elected to the Board to serve out an unexpired portion of a retired member's term shall not be considered to have served a "term" unless the

unexpired portion of the term so served is three years or more. Permanent removal of residence from Bexar County by any member of the Board shall vacate his office as a member of the Board, and any member of the Board, other than the Mayor of the City, who shall be continuously absent from all meetings held by the Board for a period of four consecutive months shall, unless he shall have been granted leave of absence by the unanimous vote of the remaining members of the Board, be considered to have vacated his office as a member of the Board. Any member of the Board other than the Mayor of the City may, by unanimous vote of the remaining members of the Board, be removed from office, but only for adequate cause.

Except as otherwise specifically provided in this Trust Indenture, the Board of Trustees shall have absolute and complete authority and power with reference to the control, management and operation of the systems and the expenditure and application of the revenues of the systems subject to the provisions contained in this Trust Indenture, all of which shall be binding upon and shall govern the Board of Trustees. In connection with the management and operation of the systems and the expenditure and application of the revenues therefrom, the Board of Trustees shall be vested with all of the powers of the City with respect thereto, including all powers necessary or appropriate for the performance of all of the covenants, undertakings and agreements of the City contained in this Trust Indenture, and shall have full power and authority to make rules and regulations governing the furnishing of electric and gas service to customers and for the payment of the same, and for the discontinuance of such services upon failure of customers to pay therefor, and, to the extent authorized by law, shall have full authority with reference to making of extensions, improvements and additions to the systems and the acquiring by purchase or condemnation of properties of every kind in connection therewith.

The Board of Trustees shall elect one of its members as Chairman and one as Vice Chairman of the Board and shall appoint a Secretary and a Treasurer, or a Secretary-Treasurer, who may, but need not be, a member or members of the Board. If a member of the Board of Trustees is not appointed as Secretary or Treasurer, or Secretary-Treasurer, then an employee or employees of the Board whose duties in the operation of the systems require performance of similar duties may be appointed as Secretary or Treasurer, or Secretary-Treasurer. The Board of Trustees may follow and adopt such rules for the orderly handling of its affairs as it may see fit and may manage

and conduct the affairs of the systems with the same freedom and in the same manner ordinarily employed by the Board of Directors of private corporations operating properties of a similar nature.

The Board of Trustees shall appoint and employ all officers and employees which it may deem desirable, including a General Manager of the system and an attorney or attorneys. No officer or employee of the Board of Trustees may be employed who shall be related within the second degree of consanguinity or affinity to any member of the Board of Trustees.

The Board of Trustees shall obtain and keep continually in force an employees' fidelity and indemnity bond of the so-called "blanket" type, written by a solvent and recognized indemnity company and covering losses to the amount of not less than One Hundred Thousand Dollars (\$100,000).

The members of the Board of Trustees, other than the Mayor of the City, shall receive annual compensation in the amount of Two Thousand (\$2,000.00) Dollars, except that the Chairman of the Board shall receive annual compensation in the amount of Two Thousand Five Hundred (\$2,500.00) Dollars.

The members of the Board of Trustees shall not be personally liable, either individually or collectively, for any act or omission not willfully fraudulent or in bad faith.

## ARTICLE VII

### POSSESSION AND RELEASE OF PROPERTY

SECTION 1. While not in default in the payment of principal of or interest on any of the bonds secured hereby, or in respect of any of the covenants, agreements or conditions in this Indenture contained, the City, through the Board of Trustees, shall be permitted and suffered to possess, use and enjoy the trust estate and all property and appurtenances, franchises and rights conveyed by this Indenture (except money or property, if any, expressly required to be deposited with the Corporate Trustee) and to receive and use the revenues, rents, issues, income, produce and profits thereof with power in the ordinary course of business freely and without let or hindrance on the part of the Indenture Trustees or of the holders of the bonds, to use and consume supplies; to alter, repair, dismantle and change the position of any of its buildings and structures, plants, mains, pipe lines, poles, wires, conduits or other property whatsoever (provided that no such change shall impair the lien of

Parity Bonds are stated to mature on February 1 or August 1, or both, in each of the years they are scheduled to mature; and (iv) the Reserve Amount required to be accumulated or then on deposit in the Retirement Account equals not less than the average annual requirements for the payment of principal of and interest on all Parity Bonds which will be Outstanding after giving effect to the bonds then proposed to achieve the status of Parity Bonds; provided, however, that the City has expressly reserved the right to fund the Reserve Amount, in whole or in part, by purchasing an insurance policy, surety policy, or other similar credit policy when the Previously Issued Parity Bonds issued before August 6, 1992 are no longer outstanding.

Section 19. No Obligation of Lien Superior to that of the Parity Bonds. The City will not hereafter issue any additional bonds on a parity with the Old Series Bonds under the terms of the Indenture or create or issue evidences of indebtedness for any purpose possessing a lien on Net Revenues superior to that to be possessed by the Parity Bonds. The City, however, retains the right to create and issue evidences of indebtedness whose lien on Net Revenues shall be subordinate to that possessed by the Parity Bonds.

Section 20. Management of the Systems. In accordance with the provisions of the ordinances authorizing the Previously Issued Parity Bonds, and this Ordinance, the City hereby agrees, covenants, and reaffirms that:

(a) Until such time as the terms, conditions, and provisions of the Indenture become inoperative and the Trust Estate conveyed by the Indenture reverts to the City free and clear of the encumbrance created thereby, the management of the Systems and all of its properties and affairs shall be conducted, operated, and controlled in the manner and to the same extent as set forth in the Indenture to which reference is hereby made for a specific description thereof.

(b) At such time as the terms, conditions, and provisions of the Indenture become inoperative and the Trust Estate conveyed by the Indenture reverts to the City free and clear of the encumbrance created thereby and during such time as any Parity Bonds issued hereunder are Outstanding and unpaid, the complete management and control of the Systems, pursuant to the authority contained in Texas Revised Civil Statutes Annotated Article 1115, as amended, shall be vested in a Board of Trustees consisting of five citizens (one of whom shall be the Mayor of the City) of the United States of America permanently residing in Bexar County, Texas, to be known as the "City Public Service Board of San Antonio, Texas". Those persons serving as appointed members of the Board of Trustees at the time defeasance of the Indenture occurs shall continue in office until their respective terms as established under Article VI of the Indenture have expired. The Mayor of the City shall be a voting member of the Board, shall represent the City Council thereon, and shall be charged with the duty and responsibility of keeping the City Council fully advised and informed at all times of any actions, deliberations and decisions of the Board and its conduct of the management of the Systems.

All vacancies in membership on the Board (excluding the Mayor of the City), whether occasioned by failure or refusal of any person previously named to accept appointment or by expiration of term of office or otherwise, shall be filled in the following manner: a nominee to fill such vacancy shall be elected by the majority vote of the remaining members of the Board of Trustees, such majority vote to include the vote of the Mayor. The name of such nominee shall then be submitted by the Mayor to the vote of the City Council, which by a majority vote of the members thereof then in office shall, as evidenced by ordinance or resolution, either confirm or reject such nominee; provided, however, if the City Council fails to act upon such nominee, such failure to do so shall be considered as a rejection of such nominee and another nominee shall be selected by the Board. If a vacancy occurs and the remaining members of the Board (including the Mayor) fail to elect a nominee to fill such vacancy within sixty (60) days after the vacancy occurs (or fail to select another nominee within sixty (60) days after rejection of a nominee by the City Council), the City Council, by a majority vote of the members thereof then in office, shall elect a person to fill such vacancy and shall appoint such Trustee by resolution or ordinance. In the event the City rejects or fails to confirm three (3) consecutive nominees of the Board to fill a vacancy on the Board, the City Council shall, within thirty (30) days after the third rejection, appoint a temporary Trustee to fill such vacancy pending the appointment of a permanent Trustee to fill such vacancy. The appointment of a temporary Trustee by the City Council shall constitute the nomination of such appointee as the permanent Trustee to fill such vacancy. Unless the remaining members of the Board, by a majority vote, reject the nominee selected by the City Council within thirty (30) days after his appointment as a temporary Trustee, the appointment shall become final and the temporary Trustee shall automatically become the permanent Trustee to fill such vacancy. In such vote, the vote of the Mayor shall automatically be cast as a vote in favor of the confirmation of such Trustee, whether cast by the Mayor or not.

If the nominee of the City Council is rejected by a majority vote of the remaining Trustees, the remaining Trustees shall within thirty (30) days after such rejection elect another nominee to fill such vacancy. Such nominee shall be considered by the City Council and if approved shall become the permanent Trustee. If such nominee is rejected by a majority vote of the members of the City Council then in office, or in the event the City Council fails to act upon such nomination within thirty (30) days after the nomination is presented to the City Council, the temporary Trustee theretofore appointed by the City Council shall automatically become the permanent Trustee to fill such vacancy. The term of office of each member appointed to the Board shall be five (5) years. A person who has served as an appointed member of the Board for a single five-year term shall be eligible for reappointment for one additional five-year term and one only. A member who is appointed to the Board to serve out an unexpired portion of a retired member's term shall not be considered to have served a "term" unless the unexpired portion of the term so served is three (3) years or more. Permanent removal of residence from Bexar County by any appointed member of the Board shall vacate his office as a member of the Board, or any member (other than the Mayor of the City) who shall be continuously absent from all meetings held by the Board for a period of

four (4) consecutive months shall, unless he shall have been granted leave of absence by the unanimous vote of the remaining members of the Board, be considered to have vacated his office as a member of the Board. Any member of the Board, other than the Mayor of the City, may, by unanimous vote of the remaining members of the Board, be removed from office, but only for adequate cause.

Notwithstanding any of the foregoing provisions as contained in this Section 20(b) or in any other section of this Ordinance pertaining to the appointment or selection of Trustees to the Board upon the defeasance of the Indenture securing payment of the Old Series Bonds, the City Council reserves unto itself the absolute right at any time upon passage of an ordinance approved by a majority vote of its members to change the method of selection of and appointment to the Board of Trustees to direct selection by the City Council, with such change of method to direct selection being at the sole option of the City Council without approval of any persons, party, holder of Parity Bonds, or the Board of Trustees.

Except as otherwise specifically provided in this Ordinance, the Board of Trustees shall have absolute and complete authority and power with reference to the control, management, and operation of the Systems and the expenditure and application of the revenues of the Systems subject to the provisions contained in this Ordinance, all of which shall be binding upon and shall govern the Board of Trustees. In connection with the management and operation of the Systems and the expenditure and application of the revenues therefrom, the Board of Trustees shall be vested with all of the powers of the City with respect thereto, including all powers necessary or appropriate for the performance of all of the covenants, undertakings, and agreements of the City contained in this Ordinance, and shall have full power and authority to make rules and regulations governing the furnishing of electric and gas service to customers and for the payment of the same, and for the discontinuance of such services upon failure of customers to pay therefor, and, to the extent authorized by law, shall have full authority with reference to making of extensions, improvements, and additions to the Systems and the acquiring by purchase or condemnation of properties of every kind in connection therewith.

The Board of Trustees, in exercising the management powers granted herein, will ensure that policies adopted affecting research, development, and corporate planning will be consistent with City Council policy, and policies adopted by the Board of Trustees pertaining to such matters will be subject to City Council review.

The Board of Trustees shall elect one of its members as Chairman and one as Vice Chairman of the Board and shall appoint a Secretary and a Treasurer, or a Secretary-Treasurer, who may, but need not be, a member or members of the Board. If a member of the Board of Trustees is not appointed as Secretary or Treasurer, or Secretary-Treasurer, then an employee or employees of the Board whose duties in the operation of the Systems require performance of similar duties may be appointed as Secretary or Treasurer or Secretary-Treasurer. The Board of Trustees may follow and

adopt such rules for the orderly handling of its affairs as it may see fit and may manage and conduct the affairs of the Systems with the same freedom and in the same manner ordinarily employed by the board of directors of private corporations operating properties of a similar nature. No member of the Board of Trustees, however, shall ever vote by proxy in the exercise of his duties as a Trustee.

The Board of Trustees shall appoint and employ all officers, employees, and professional consultants which it may deem desirable, including without limitation, a General Manager of the Systems, attorneys, engineers, architects, and other advisors. No officer or employee of the Board of Trustees may be employed who shall be related within the second degree of consanguinity or affinity to any member of the Board of Trustees.

The Board of Trustees shall obtain and keep continually in force an employees' fidelity and indemnity bond of the so-called "blanket" type, written by a solvent and recognized indemnity company authorized to do business in the state of Texas and covering losses to the amount of not less than One Hundred Thousand Dollars (\$100,000).

The members of the Board of Trustees, other than the Mayor of the City, shall receive annual compensation in the minimum amount of Two Thousand Dollars (\$2,000.00), except that the Chairman of the Board shall receive annual compensation in the minimum amount of Two Thousand Five Hundred Dollars (\$2,500.00). Such compensation may be increased from time to time by the majority vote of the City Council then in office.

The members of the Board of Trustees and administrative officers shall not be personally liable, either individually or collectively, for any act or omission not willfully fraudulent or in bad faith.

**Section 21. Method of Amendment.** The City hereby reserves the right to amend ordinances authorizing the issuance of Parity Bonds subject to the following terms and conditions:

(a) The holders of Parity Bonds aggregating in principal amount sixty-six and two-thirds percent (66-2/3%) of the aggregate principal amount of then Outstanding Parity Bonds shall have the right from time to time to approve any amendment to this Ordinance which may be deemed necessary or desirable by the City; provided, however, that without the consent of the holders of the Parity Bonds the provisions of the Certificate as to Tax Exemption executed in connection with the initial delivery of the New Series 1992 Bonds may be amended at any time if the City receives an opinion from a nationally recognized bond counsel stating that such amendment would not adversely affect the status for federal income tax purposes of interest on the New Series 1992 Bonds and provided further that nothing herein contained shall permit or be